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Rules and Regulations

Federal Register

Vol. 73, No. 9

Monday, January 14, 2008

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

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure in this part to reflect the relocation of its Northeastern Regional Office. On January 22, 2008, the Board relocates its Northeastern Regional Office from the U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, PA 19106–2987, to 1601 Market Street, Suite 1700, Philadelphia, PA 19103. Appendix II of this part is amended to show the new address. The Northeastern Office telephone numbers remain unchanged.

DATES: *Effective Date:* January 22, 2008.

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, (202) 653–7200. The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

■ Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

■ 1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

Appendix II to Part 1201 [Amended]

■ 2. Amend Appendix II to 5 CFR part 1201 in item 3. by removing ''U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, PA 19106–2987,'' and adding, in its place ''1601 Market Street, Suite 1700, Philadelphia, PA 19103,''.

William Spencer,

Clerk of the Board.

[FR Doc. E8–447 Filed 1–11–08; 8:45 am]

BILLING CODE 7400–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 308, and 309

RIN 3064–AD25

Deposit Insurance Requirements After Certain Conversions; Definition of ''Corporate Reorganization;'' Optional Conversions (''Oakar Transactions''); Additional Grounds for Disapproval of Changes in Control; and Disclosure of Certain Supervisory Information

AGENCY: Federal Deposit Insurance Corporation (''FDIC'').

ACTION: Interim rule and request for comment.

SUMMARY: The FDIC is amending certain regulations in order to conform them to certain Federal statutes recently amended by the Financial Services Regulatory Relief Act of 2006, the Federal Deposit Insurance Reform Act of 2005, and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005. First, the FDIC is amending its deposit insurance regulations to clarify that a deposit insurance application is required for each new bank that results from the conversion of certain Federal savings associations into multiple banks. Second, the FDIC is amending its merger regulations to define the term ''corporate reorganization'' to mean a merger that involves solely an insured depository institution and one or more of its affiliates. Third, the FDIC is amending its merger regulations to remove any reference to ''Optional Conversions'' (sometimes referred to as ''Oakar Transactions''). Fourth, the FDIC is adding, as an additional grounds for disapproval of a change in control notice, unfavorable future prospects of the institution to be acquired. Finally, the FDIC is authorizing the disclosure of examination reports and other confidential supervisory information to certain additional agencies and entities.

DATES: The interim rule is effective January 14, 2008. Comments on the rule must be received by March 14, 2008.

ADDRESSES: You may submit comments on the interim rule, by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include RIN 3064–AD25 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/propose.html*, including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1022, 3502 North Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Brett A. McCallister, Review Examiner (816) 234–8099 x4223, in the Division of Supervision and Consumer Protection; or Julie E. Paris, Senior Attorney, (202) 898–3821, Richard Bogue, Counsel, (202) 898–3726, or Robert C. Fick, Counsel, (202) 898–8962, in the Legal Division.

SUPPLEMENTARY INFORMATION:

I. Background.

On October 13, 2006, the President signed into law the Financial Services Regulatory Relief Act of 2006 (''FSRRA'').[1] The stated purpose of FSRRA is to reduce regulatory burden and improve productivity for financial institutions. Several provisions of FSRRA amend statutes that the FDIC has implemented through its Rules and Regulations (''Rules'').[2] As a result, the FDIC is revising certain of its Rules to conform them to the statutes as

[1] Public Law No. 109–351, 12 STAT. 1966 (Oct. 13, 2006).

[2] Chapter III of Title 12 of the Code of Federal Regulations.

amended by FSRRA. In addition, Congress enacted the Federal Deposit Insurance Reform Act of 2005 (''Reform Act'') [3] and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (''Amendments Act'') [4] which consolidated the two former deposit insurance funds into a single deposit insurance fund. As a result, the FDIC is revising its regulations to reflect this change.

II. Regulatory Amendments

A. Deposit Insurance Requirements After Certain Conversions

Section 5(i)(5) of the Home Owners' Loan Act (''HOLA'') [5] generally authorizes any Federal savings association that was chartered and in operation before November 12, 1999 and that had branches in one or more states, to convert into one or more national or state banks, each of which may encompass one or more of the existing branches. Section 608(a) of FSRRA amended section 5(i)(5) of the HOLA to generally require that if such a conversion results in more than one national or state bank, each resulting bank must obtain deposit insurance from the FDIC pursuant to section 5(a) of the Federal Deposit Insurance Act (''FDI Act'').[6]

Subpart B of Part 303 of the FDIC's Rules sets forth the procedures for applying for deposit insurance. Section 303.20 describes the scope of this subpart to include applications for deposit insurance for, among other institutions, proposed depository institutions. Since it is not clear that this subpart applies to each bank that results from the conversion of certain Federal savings associations into multiple banks under section 5(i)(5) of the HOLA, the FDIC is amending section 303.20 to expressly confirm the applicability of subpart B of part 303 to such resulting banks.

B. Definition of Corporate Reorganization

Section 606 made two changes to the Bank Merger Act [7] with respect to mergers that solely involve an insured depository institution and one or more of its affiliates (''Affiliate Mergers''). First, for Affiliate Mergers, section 606 amended section 18(c)(4) of the FDI Act [8] to eliminate the requirement for the responsible Federal banking agency to request competitive factors reports from either the other Federal banking agencies or the Attorney General of the United States.[9] Prior to FSRRA the responsible Federal banking agency had to request competitive factors reports for Affiliate Mergers. Second, section 606 revised section 18(c)(6) of the FDI Act [10] to eliminate the post-approval waiting period for Affiliate Mergers. Prior to FSRRA the applicant in an Affiliate Merger had to wait up to thirty days after obtaining the agency's approval before it could consummate the transaction.

The FDIC's regulations at 12 CFR 303.61(b) provides a definition of ''corporate reorganization'' that identifies a class of mergers that generally do not raise any competitive concerns and, therefore, do not require the same level of competitive analysis as other mergers subject to the Bank Merger Act. As a result, such mergers are less burdensome on applicants. Generally, 12 CFR 303.61(b) defines the term to include (i) mergers between an insured institution and its subsidiary or its holding company and (ii) mergers between institutions and entities that were ''commonly-owned.'' Institutions are ''commonly-owned'' only if more than 50% of the voting stock of each was owned by the same entity. The changes made by Section 606 of the FSRRA, however, indicate that there are no competitive concerns for a class of mergers that is broader than the class identified by the FDIC's regulation as corporate reorganizations. Specifically, FSRRA indicates that there are no competitive concerns for mergers that solely involve an insured depository institution and one or more affiliates.

While the term ''corporate reorganization'' is only used in subpart D as one of several illustrative examples of the types of mergers covered by the Bank Merger Act, the definition could cause confusion as to how it relates to Affiliate Mergers. As a result, the FDIC is amending the definition of ''corporate reorganization'' in order to conform it to the changes made by FSRRA and to avoid any confusion about the need for competitive analyses and post-approval waiting periods. Accordingly, the FDIC is amending 12 CFR 303.61(b) to define ''corporate reorganization'' as a merger that involves solely an insured depository institution and one or more of its affiliates.

C. Optional Conversions

Before it was repealed, the former section 5(d)(3) of the FDI Act [11] generally authorized a member of one insurance fund to merge with a member of the other fund without changing the funds that insured the deposits of the two institutions. This type of merger was referred to as an ''Optional Conversion'' in both section 5(d)(3) of the FDI Act and in section 303.63(d) of the FDIC's Rules; it was also commonly known as an ''Oakar Transaction.'' Section 303.63(d) of the FDIC's Rules required the applicant in an Optional Conversion to identify the merger as an ''Optional Conversion'' in its application.

On March 31, 2006, pursuant to the Reform Act and the Amendments Act, the former Savings Association Insurance Fund (''SAIF'') and the former Bank Insurance Fund (''BIF'') were consolidated into a single fund, the Deposit Insurance Fund. In addition, the Amendments Act repealed section 5(d)(3) of the FDI Act effective with the merger of the two funds.[12] Since the Reform Act consolidated the two funds into one, and since the Amendments Act repealed section 5(d)(3) of the FDI Act, Optional Conversions are no longer possible. As a result, the FDIC is amending section 303.63 to remove paragraph (d) *Optional conversions.* The removed paragraph formerly read as follows:

(d) *Optional conversions.* If the proposed merger transaction is an optional conversion, the merger application shall include a statement that the proposed merger transaction is a transaction covered by section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)).

D. Additional Grounds for Disapproval of a Change in Control

Section 705 of FSRRA amended section 7(j)(7) of the FDI Act [13] to add an additional ground for the disapproval of a proposed acquisition of control of a bank. The additional ground for disapproval of a proposed acquisition is if the future prospects of the institution might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank.

Section 308.111 of the FDIC's Rules lists the statutory grounds for disapproval of a proposed acquisition of control of an insured state nonmember bank. Since FSRRA added unfavorable future prospects of the institution as an additional ground for disapproval of a

[3] Pub. L. 109–171, 120 STAT. 9 (Feb. 8, 2006).

[4] Pub. L. 109–173, 119 STAT. 3601 (Feb. 15, 2006).

[5] 12 U.S.C. 1464(i)(5).

[6] 12 U.S.C. 1815(a).

[7] 12 U.S.C. 1828(c).

[8] 12 U.S.C. 1828(c)(4).

[9] Notwithstanding this change, the responsible Federal banking agency retains the ability to request competitive factors reports if the circumstances warrant.

[10] 12 U.S.C. 1828(c)(6).

[11] 12 U.S.C. 1815(d)(3) (repealed 2006).

[12] *See* section 8(a)(4) of the Amendments Act, Pub. L. 109–173 (2006).

[13] 12 U.S.C. 1817(j)(7).

proposed acquisition, the FDIC is amending section 308.111(c) to reflect this new ground.

E. Disclosure of Certain Supervisory Information

Section 707 of FSRRA amended section 7(a)(2) of the FDI Act [14] by adding a new subsection (C) that generally expands the authority of the Federal banking agencies to furnish examination reports and other confidential supervisory information to (1) any other Federal and State agencies with supervisory or regulatory authority over the depository institution or entity, (2) officers, directors and receivers of such depository institution or entity, and (3) any other person that the Federal banking agency determines to be appropriate.

The FDIC's Rules authorizing the disclosure of confidential information are found in Part 309 of its Rules. Paragraph (b)(3) of section 309.6 entitled ''Disclosure of exempt records,'' authorizes the disclosure of exempt records to Federal financial institution supervisory agencies and certain other agencies.

Since section 707 of FSRRA authorized additional disclosures of certain supervisory information, the FDIC is amending section 309.6(b)(3) to add those additional disclosures to the disclosures previously authorized.

III. Regulatory Analysis and Procedure as to Interim Rule

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [15] requires the FDIC to use ''plain language'' in all proposed and final rules published after January 1, 2000. The FDIC invites comments on whether the interim rule is clearly stated and effectively organized, and how the FDIC might make the text easier to understand.

B. Administrative Procedure Act

The interim rule takes effect upon publication in the **Federal Register**. The interim rule conforms the FDIC's regulations to several statutory provisions that were amended by FSRRA on October 13, 2006 and by the Reform Act and the Amendments Act effective on March 31, 2006. The statutory amendments made by FSRRA which took effect upon enactment on October 13, 2006 and the statutory amendments made by the Reform Act and the Amendments Act which took effect on March 31, 2006 continue in effect. The amendments to the FDIC's regulations made by the interim rule generally reflect the language contained in the amended statutes without interpretation. The amendments made by the interim rule effect no substantive changes beyond those already effected by Federal statute. For the foregoing reasons, solicitation of public comment prior to the effectiveness of these regulatory amendments is unnecessary. Accordingly, pursuant to 5 U.S.C. 553(b), the FDIC finds that good cause exists for making the rule effective upon this publication without first seeking public comment. However, the FDIC nonetheless invites public comment on the interim rule and will amend the rule if appropriate after reviewing any public comments received.

C. Regulatory Flexibility Act

Pursuant to section 603(a) of the Regulatory Flexibility Act (''RFA'') [16] a regulatory flexibility analysis is only required when an agency is required to publish a notice of proposed rulemaking for a proposed rule. Since the regulatory amendments made by the interim rule are effective upon publication in the **Federal Register**, and since no notice of proposed rulemaking is required to be published, no regulatory flexibility analysis is required.

D. Paperwork Reduction Act

No new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the interim rule.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, Fraud, Investigations, Lawyers, Penalties.

12 CFR Part 309

Banks, banking, Credit, Freedom of information, Privacy.

Authority and Issuance

■ For the reasons set forth in the preamble, parts 303, 308, and 309 of Chapter III of the title 12 of the Code of Federal Regulations are amended as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

■ 2. Add the following sentence at the end of § 303.20 to read as follows:

§ 303.20 Scope.

* * * Each bank that results from the conversion of a Federal savings association into multiple banks pursuant to section 5(i)(5) of the Home Owners' Loan Act, 12 U.S.C. 1464(i)(5), is treated as a proposed depository institution or a de novo institution, as appropriate, for purposes of this subpart.

■ 3. Amend § 303.61 by revising paragraph (b) to read as follows:

§ 303.61 Definitions.

* * * * *

(b) *Corporate reorganization* means a merger transaction that involves solely an insured depository institution and one or more of its affiliates.

* * * * *

§ 303.63 [Amended]

■ 4. In § 303.63, remove paragraph (d).

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 5. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 780–5, 6805(b)(1); 28 U.S.C. 2461 note, 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s) Pub. L. 104–134, 110 Stat. 1321–358.

■ 6. Amend § 308.111 by revising paragraph (c) to read as follows:

§ 308.111 Grounds for disapproval.

* * * * *

(c) Either the financial condition of any acquiring person or the future prospects of the institution might jeopardize the financial stability of the bank or prejudice the interest of the depositors of the bank.

* * * * *

PART 309—DISCLOSURE OF INFORMATION

■ 7. The authority citation for part 309 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1819(a) ''Seventh'' and ''Tenth.''

[14] 12 U.S.C. 1817(a)(2).

[15] 12 U.S.C. 4809.

[16] 5 U.S.C. 603(a).

■ 8. Amend § 309.6 by adding the following new sentence at the end of paragraph (b)(3) to read as follows:

§ 309.6 Disclosure of exempt records.

* * * * *

(b) * * *

(3) * * * Finally, the Director, or designee, may in his or her discretion and for good cause, disclose reports of examination or other confidential supervisory information concerning any depository institution or other entity examined by the Corporation under authority of Federal law to: any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity; any officer, director, or receiver of such depository institution or entity; and any other person that the Corporation determines to be appropriate.

* * * * *

By Order of the Board of Directors.

Dated at Washington, DC, the 19th day of December, 2007. Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E8–294 Filed 1–11–08; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 137

[Docket No. USCG–2006–25708]

RIN 1625–AB09

Landowner Defenses to Liability Under the Oil Pollution Act of 1990: Standards and Practices for Conducting All Appropriate Inquiries

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing standards and practices concerning the ''all appropriate inquiries'' element of a defense to liability of an owner or operator of a facility that is the source of a discharge or substantial threat of discharge of oil into the navigable waters or adjoining shorelines or the exclusive economic zone. To be entitled to the defense, those persons must show, among other elements not addressed in this rulemaking, that, before acquiring the real property on which the facility is located, they had made all appropriate inquiries into its previous ownership and uses to determine the presence or likely presence of oil. This rule is consistent with a final rule on this subject published by the Environmental Protection Agency.

DATES: This final rule is effective February 13, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2006–25708 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, 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. You may also find this docket on the Internet at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Benjamin White, National Pollution Funds Center, Coast Guard, telephone 202–493–6863. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 12, 2007, we published a notice of proposed rulemaking (NPRM) entitled ''Landowner Defenses to Liability Under the Oil Pollution Act of 1990: Standards and Practices for Conducting All Appropriate Inquiries'' in the **Federal Register** (72 FR 32232). We received no comments on the proposed rule. No public meeting was requested and none was held. The Coast Guard is, therefore, adopting the NPRM as published and without change as a final rule.

Background and Purpose

In general, under the Oil Pollution Act of 1990 (33 U.S.C. 2701, *et seq.*) (OPA 90), an owner or operator of a facility that is the source of a discharge, or a substantial threat of discharge, of oil into the navigable waters or adjoining shorelines or the exclusive economic zone is liable for damages and removal costs resulting from the discharge or threat. See 33 U.S.C. 2702(a). Under OPA 90, that person is known as a ''responsible party.'' See 33 U.S.C. 2701(32).

The Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108–293) (the 2004 Act) amended OPA 90, at 33 U.S.C. 2703(d)(4), by creating an ''innocent landowner'' defense to liability for those persons who could demonstrate, among other requirements, that before acquiring the real property on which the facility is located, they did not know, and had no reason to know that oil that is the subject of the discharge or substantial threat of discharge was located on, in, or at the facility. See 33 U.S.C. 2703(d)(2)(A). This is done by establishing that, before it acquired the real property on which the facility is located, it carried out ''all appropriate inquiries'' into its previous ownership and uses according to ''generally accepted good commercial and customary standards and practices.'' See 33 U.S.C. 2703(d)(4)(A)(i). The Coast Guard is required to establish, by regulation, the standards and practices for carrying out all appropriate inquiries (33 U.S.C. 2703(d)(4)(B)), which is the subject of this rulemaking.

This rulemaking applies to persons planning to acquire real property on which a facility, as defined under 33 U.S.C. 2701(9), is located who choose to take steps necessary to protect themselves from liability should unknown oil that is the subject of a discharge or substantial threat of discharge be found at the facility after they acquire it. We call these persons ''landowners'' or ''owners'' in this preamble. Should prospective landowners opt for this protection, they may find that they have already complied with this rule if they have complied with ASTM International (ASTM) E 1527–05, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' The industry standard ASTM E 1527–05, is consistent with this rule and is compliant with the statutory criteria for all appropriate inquiries. Persons conducting all appropriate inquiries may use the procedures included in the ASTM E 1527–05 standard to comply with this rule. For more information on the ASTM standard, see the ''ASTM Standard E 1527–05'' section in this preamble.

Note that this rule addresses only one of several elements that must be complied with in order to avail oneself of this protection. The element addressed in this rule is called the ''all-appropriate-inquiries'' element found in 33 U.S.C. 2703(d)(4).

Scope of the Rule

Congress included in the 2004 Act a list of criteria that the Coast Guard must address in their regulations for establishing standards and practices for conducting all appropriate inquiries. The criteria may be found in 33 U.S.C. 2703(d)(4)(C). This rulemaking is limited only to providing those standards and practices relative to the ''all appropriate inquiries'' element.

This rulemaking does not address the other requirements in 33 U.S.C. 2703 which also must be met to qualify for the innocent-landowner defense.

The rule would not apply to real property purchased by a non-governmental entity or non-commercial entity for residential use or other similar uses where an inspection and a title search of the facility and the real property on which the facility is located reveal no basis for further investigation. In those cases, 33 U.S.C. 2703(d)(4)(E) states that the inspection and title search satisfy the requirements for all appropriate inquiries.

Also, the rule would not affect the existing OPA 90 liability protections for State and local governments that acquire a facility involuntarily in their functions as sovereigns under 33 U.S.C. 2701(26)(B)(i) and 33 U.S.C. 2703(d)(2)(B). Involuntary acquisition of facilities by State and local governments do not fall under the all-appropriate-inquiries provision of 33 U.S.C. 2703(d)(4).

Consultation With Other Agencies

Under 33 U.S.C. 2703(d)(4)(B), we are required to consult with the Environmental Protection Agency (EPA) to develop regulations establishing standards and practices for conducting ''all appropriate inquiries.'' On November 1, 2005, EPA published a final rule in the **Federal Register** (70 FR 66070) establishing standards and practices for conducting all appropriate inquiries as required by sections 101(35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9601, et seq.) found at 42 U.S.C. 9601(35)(B)(ii) and (iii). CERCLA's liability provision applies to releases or threatened releases of ''hazardous substances'', which is defined to exclude most forms of oil. These regulations are located in 40 CFR part 312. EPA used a negotiated rulemaking process to develop their standards and practices for conducting all appropriate inquiries under CERCLA. EPA's Negotiated Rulemaking Committee included interested parties from environmental interest groups; the environmental justice community; federal, state, tribal, and local governments; real estate developers, bankers and lenders; and, environmental professionals.

The all-appropriate-inquiries provisions of OPA 90 and CERCLA are similar in many respects, but not identical. The CERCLA provision has a broader scope than the OPA provision. It addresses certain liability defense provisions that are unique to CERCLA, involving persons who may not be affected by this rule, such as contiguous property owners and bona fide prospective purchasers. While differences between OPA 90 and CERCLA have required certain differences between the Coast Guard's final rule and EPA's final rule, we have coordinated with EPA to ensure that the two rules have been rendered as consistent as possible within statutory constraints. Maintaining consistency between the two rules helps standardize practices within the Federal Government.

ASTM Standard E 1527–05

ASTM International (ASTM) E 1527–05, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,'' is the current voluntary industry standard that defines good commercial and customary practice in the United States for conducting an environmental site assessment of a parcel of commercial real estate with respect to oil under OPA 90 and hazardous substances under CERCLA. The 2004 Act, at 33 U.S.C. 2703 (d)(4)(D)(ii), refers to ASTM E 1527–97, which is no longer available from ASTM and has been replaced by ASTM E 1527–05. Both the EPA and the Coast Guard agree that the new ASTM E 1527–05 is the active industry standard and is consistent with Congressional intent. Persons conducting all appropriate inquiries are permitted to use the procedures included in the ASTM E 1527–05 standard to comply with this rule, but use of the ASTM is not mandatory.

Regulatory Evaluation

Executive Order 12866

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

A final Regulatory Evaluation follows:

Compliance with this rule is required only for those persons engaging in a commercial real estate transaction who choose to take steps necessary to protect themselves from liability should unknown oil that is the subject of a discharge or substantial threat of discharge be found at the facility after they acquire it.

The following analysis of the economic impacts associated with this rule relies heavily upon the data collected and the assumptions made in the Environmental Impact Analysis of EPA's final rule, ''Economic Impact Analysis for the Final All Appropriate Inquiries Regulation,'' Docket ID No. SFUND–2004–0001 found at *http://www.regulations.gov/fdmspublic/component/main* or at EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC. EPA surveyed all publicly available literature on environmental assessments of sites to determine what standard industry was customarily using. These assessments correspond to the all appropriate inquiries provision being addressed in this rulemaking and are commonly known as Phase I environmental site assessments (Phase I ESAs). EPA determined that the 2000 edition of ASTM E 1527 (i.e., ASTM E 1527–00) would be their regulatory baseline. This baseline represented the ''no action'' scenario to which all regulatory alternatives were compared and their economic impacts were measured. ASTM E 1527–00 would have been applied by industry absent EPA's regulation, because this voluntary industry standard represented ''generally accepted good commercial and customary practices.'' This assumption was confirmed by the members of EPA's Negotiated Rulemaking Committee (See the ''Consultation with Other Agencies'' section of this preamble.). To further validate their assumption, EPA received no public comments on this aspect of its Economic Impact Analysis. In addition, ASTM International states that ASTM E 1527–97 (the edition referred to in the 2004 Act) is no longer available because, when a new version of a standard is released, previous versions of the standard are no longer the active industry standard. The Coast Guard, after independently contacting ASTM International, concurs that the ASTM E 1527–00 standard more accurately reflects the current market conditions than the E 1527–97 standard referenced in OPA 90 as the acceptable interim standard (33 U.S.C. 2703(d)(4)(D)(ii)). The Coast Guard therefore uses the ASTM E 1527–00 standard as its regulatory baseline for its analysis of the economic impacts associated with this rule.

Historically, Phase I ESAs have been used towards providing liability protection to individuals under CERCLA. A recent survey conducted by Environmental Data Resources, Inc. (EDR) indicates that approximately 55 percent of all Phase I ESAs are driven exclusively by a need for the landowner

to qualify for protection from CERCLA liability. The remaining 45 percent are driven by a desire to assess other business environmental risk concerns (i.e., asbestos, lead-based paint, oil, etc.).

As previously discussed in the ''Consultation with Other Agencies'' section of this preamble, this rule is consistent with EPA's final rule. The scope of EPA's rulemaking however is much larger than this rule. As such, the economic impacts of this rule are a subset of the impacts estimated by EPA's rulemaking. This reduction in economic impact results primarily from the lower number of Phase I ESAs expected to be conducted annually under this rule compared to EPA's final rule.

As was the case with EPA's rulemaking, this rule is expected to result in the following economic impacts:

(1) A reduced burden for the conduct of interviews in those cases where the facility and the real property on which the facility is located is abandoned. The new requirement requires only that neighboring property owners and occupants be interviewed and not the current owners and occupants of the abandoned property. This burden would range from no change to a decrease of 0.5 hour per Phase I ESA depending on the type and size of the facility and the real property on which the facility is located.

(2) An increased burden in those cases where past owners or occupants of the facility and the real property on which the facility is located need to be interviewed. This would involve the additional effort required to locate and interview past owners and occupants. This increased burden would range from 1 hour to 2 hours per Phase I ESA depending on the type and size of the facility and the real property on which the facility is located.

(3) An increased burden associated with documenting recorded environmental cleanup liens. This increased burden would involve additional time spent in preparing the Phase I ESA report. This increased burden would range from an additional 0.5 hour to 1 hour per Phase I ESA depending on the size and type of the facility and the real property on which the facility is located.

(4) An increased burden for documenting the reasons for the price and fair market value of a facility and the real property on which the facility is located in those cases where the purchase price paid is significantly below its fair market value. This increased burden would involve interviews with local government officials and increased time spent in preparing the Phase I ESA report. This increased burden would reflect an additional 0.5 hour per Phase I ESA for all sizes and types of facilities and the real properties on which the facilities are located.

(5) An increased burden for recording information about the degree of obviousness of the presence or likely presence of oil at a facility and the real property on which the facility is located. This increased burden would involve additional time spent in preparing the Phase I Environmental report. This increased burden would range from 0.5 hour to 1 hour per Phase I ESA depending on the type and size of the facility and the real property on which the facility is located.

Using a weighted labor rate of $51.20/hour applied to the activities (as outlined above) required as a result of their regulation (as they vary from those required in their regulatory baseline), EPA determined that there would be an incremental cost ranging from $52 to $58 per Phase I ESA (the low end estimate assumes that 15 percent of properties are abandoned, while the high end estimate assumes that 28 percent of properties are abandoned). Our analysis simplifies this range as an average incremental cost of $55 per Phase I ESA.

A. Analysis Calculations and Results

Using data from EPA's final rule and extrapolated for the period from 2007 to 2016, there would be an average of 332,038 Phase I ESAs conducted annually. As previously mentioned, the incremental cost of conducting a Phase I ESA to comply with EPA's rulemaking above and beyond what was required under ASTM E 1527–00 as calculated by EPA's rulemaking would be approximately $55 per ESA.

B. Estimated Annual Number of OPA 90-Related Phase I ESAs

This analysis is severely limited by the lack of data available which would allow the number of Phase I ESAs conducted applicable to this rule to be segregated from the total population of Phase I ESAs conducted.

In order to put an upward bound on the costs associated with this rule, this analysis first describes the absolute upper bound scenario (i.e., that all commercial real estate transactions not exclusively conducted for CERCLA liability protection requiring a Phase I ESA would be impacted by this rule). Next the Coast Guard developed a more likely scenario that takes into account that Phase I ESAs for certain commercial real estate transactions are outside the scope of this rule. We acknowledge that, of all of the commercial real estate transactions that occur annually, a likely small percentage would involve—

1. A facility and the real property on which the facility is located where a discharge or substantial threat of discharge of oil may impact the navigable waters or exclusive economic zone of the United States; and

2. A Phase I ESA that was conducted for establishment of the innocent landowner liability protection provision under OPA 90 and not to assess environmental risk concerns not related to oil (e.g., lead-based paint contamination, asbestos, CERCLA hazardous substances, etc.).

C. Upper Bound Cost Scenario

The estimated incremental cost of this scenario, where all future Phase I ESAs not conducted specifically for CERCLA liability protection (i.e., 45 percent as per the results of EDR's survey mentioned above) are impacted by this rule, would be approximately $8.2 million per year.

Cost calculation 1—Estimated Annual Number of Coast Guard related Phase I ESAs

332,038 Phase I ESAs × 0.45 = 149,417 Phase I ESAs

Estimated Annual Cost of Coast Guard related Phase I ESAs

149,417 Phase I ESAs × $55/ESA = $8,217,935 per year.

D. Most Likely Cost Scenario

To more accurately reflect the scope of this rule, certain commercial real estate transactions involving a Phase I ESA from EPA's analysis would have to be removed from this analysis. Those include transactions where a discharge or substantial threat of discharge of oil from a facility and the real property on which the facility is located would not have the possibility of impacting the navigable waters or exclusive economic zone of the United States and transactions which are conducted for substances other than oil. Absent the data to make more than an approximation, we assumed that five percent of the total number of Phase I ESAs may realistically reflect the number of Phase I ESAs within the scope of this rule. Under this assumption, the estimated cost associated with this rule would be significantly reduced. The estimated incremental cost under this scenario is approximately $913,110 per year.

Cost Calculation 2—Estimated Annual Number of Coast Guard related Phase I ESAs.

332,038 Phase I ESAs × 0.05 = 16,602 Phase I ESAs.

Estimated Annual Cost of Coast Guard related Phase I ESAs:

16,602 Phase I ESAs × $55/ESA = $913,110 per year.

ASTM International has since updated their ASTM E 1527 standard. Their new standard is ASTM E 1527–05. Both EPA and Coast Guard recognize that this new standard is consistent with their rulemakings on the subject. See the **Federal Register** (70 FR 66081). Because the new standard is consistent with the EPA final rule, which went into effect on November 1, 2006, and provides documentation for both hazardous substances and oil, it is likely that all prudent prospective commercial landowners will be using the more rigorous ASTM standard for their real estate transactions well before our rule becomes effective. Thus, the possible economic impact attributed to this rule might be reduced to a negligible value. The Coast Guard further notes that there have been no instances to date where a responsible party has attempted to use the interim innocent-landowner defense to liability provision under OPA 90.

EPA qualitatively assessed the benefits for their final rule. Of these benefits, only one is applicable to our rule due to our much smaller regulatory scope, namely the increased level of certainty with regard to OPA 90 liability provided to prospective owners of facilities and the real properties on which they are located with potential oil discharges. The Coast Guard, as was the case with EPA's analysis, is not able to quantify, with any significant level of confidence, the exact proportion of benefits associated with the rule. For these reasons, the costs and benefits can not be directly compared. However, because complying with this rule is required only for those persons who choose to take steps necessary to protect themselves from liability should unknown oil that is the subject of a discharge or substantial threat of discharge be found at the facility after they acquire it, it can be assumed that persons would only do so if the potential benefits to them associated with this protection from liability outweigh their costs of compliance.

Small Entities

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

As previously stated in the regulatory evaluation section above, compliance with this rule is only required for those entities, regardless of their operations, involved in a real estate transaction who choose to take steps necessary to protect themselves from liability should unknown oil that is the subject of a discharge or substantial threat of discharge be found at the facility after they acquire it. Therefore, it assumed that entities across all industries, as defined by the North American Industry Classification System (NAICS), could potentially be affected.

The Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act of 1996 require Federal agencies to measure the regulatory impacts of the rule to determine whether there will be a significant economic impact on a substantial number of small entities. Entities, however, may operate at multiple physical locations. For example, most family-owned restaurants operate at a single location, while chain restaurants have multiple locations. Thus, the annual number of transactions per entity, and therefore the demand for Phase I ESAs, is a function of the number of establishments an entity owns.

According to 2001 U.S. Census data, the distribution of establishments by entity size of the regulated community is as follows:

Less than 100 employees: 81%
100 to 499 employees: 5%
500 to 1,499 employees: 2%
1,500 employees or more: 12%

According to EPA's Office of Policy, Economics, and Innovations and EPA's National Center for Environmental Economics, it is a common practice when a proposed regulation has the potential of affecting all industries to consider all entities with less than 500 employees as small. According to 2001 U.S. Census data, when small entities are defined as entities with less than 500 employees, small entities own 86 percent of all establishments. Using EPA's assumption that small entities are equally likely to engage in commercial real estate transactions as large ones, we estimate that 86 percent of all commercial real estate transactions completed annually involve small entities. Applying this 86 percent to the ''Most Likely Cost Scenario'' and the ''Upper Bound Cost Scenario'' (See ''Regulatory Evaluation'' in this preamble.) provides a range in the number of potential transactions occurring annually of between 14,278 and 128,499.

Based on 2001 Census Bureau data, the average annual revenue per employee for an entity is approximately $24,000. Therefore, even for a small entity receiving the minimum average annual revenue of $24,000 that makes one transaction a year (a very conservative assumption), the annual cost impact of $55 would represent only 0.23 percent of annual revenues.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard received no requests for assistance from small entities concerning this rulemaking and provided none. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Title: Landowner Defenses to Liability under the Oil Pollution Act of 1990: Standards and Practices for Conducting All Appropriate Inquiries.

Summary of the Collection of Information: For landowners choosing to avail themselves of the innocent-landowner defense, they or their environmental professionals must conduct all the appropriate inquiries specified in the rule. Depending upon the particular case, this may involve interviews, research, and reports.

Need for Information: This rule is needed to assist prospective landowners in establishing the innocent-landowner defense.

Proposed Use of Information: The information could be used by persons if

their liability under OPA 90 for the discharge or substantial threat of discharge of oil were challenged in a court.

Description of the Respondents: The respondents include anyone engaging in a commercial real estate transaction that may desire to assert an innocent landowner defense to liability under OPA 90.

Number of Respondents: We estimate that there would be 16,602 respondents. This is based on an estimate made in the ''Regulatory Evaluation'' section of this preamble.

Frequency of Response: 1 hour per response.

Burden of Response: $67 per response.

Estimate of Total Annual Burden: 16,602 respondents × 1 hour per response × $67 per response = $1,112,334

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has approved the collection effective February 13, 2008. The collection will be added to 33 CFR part 137. The corresponding approval number is OMB Control Number 1625–0111, which expires on February 13, 2011.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

This rule uses the following voluntary consensus standard: ASTM E 1527–05, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' The section that references this standard and the location where this standard is available is listed in § 137.15. Persons conducting all appropriate inquiries may use the procedures included in the ASTM E 1527–05 standard to comply with this rule.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a), of the Instruction, from further environmental documentation. This rule concerns inquiries into the previous ownership and uses of facilities and the real property on which they are located, before they are acquired, to determine the presence or likely presence of oil. It has no effect on the environment.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 137

Environmental protection, Administrative practice and procedure, Petroleum, Intergovernmental relations, Reporting and recordkeeping requirements.

Words of Issuance and Regulatory Text

■ For the reasons set out in the preamble, the Coast Guard adds 33 CFR part 137 to read as follows:

PART 137—OIL SPILL LIABILITY: STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRIES UNDER THE INNOCENT LAND-OWNER DEFENSE

Subpart A—Introduction

Sec.

137.1 Purpose and applicability.
137.5 Disclosure obligations.
137.10 How are terms used in this part defined?

137.15 References: Where can I get a copy of the publication mentioned in this part?

Subpart B—Standards and Practices

137.18 Duties of persons specified in § 137.1(a).
137.20 May voluntary industry standards be used to comply with this regulation?
137.25 Qualifications of the environmental professional.
137.30 Objectives and performance factors.
137.33 General all appropriate inquiries requirements.
137.35 Inquiries by an environmental professional.
137.40 Additional inquiries.
137.45 Interviews with past and present owners, operators, and occupants.
137.50 Reviews of historical sources of information.
137.55 Searches for recorded environmental cleanup liens.
137.60 Reviews of Federal, State, tribal and local government records.
137.65 Visual inspections of the facility, the real property on which the facility is located, and adjoining properties.
137.70 Specialized knowledge or experience on the part of persons specified in § 137.1(a).
137.75 The relationship of the purchase price to the value of the facility and the real property on which the facility is located, if oil was not at the facility or on the real property.
137.80 Commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located.
137.85 The degree of obviousness of the presence or likely presence of oil at the facility and the real property on which the facility is located and the ability to detect the oil by appropriate investigation.

Authority: 33 U.S.C. 2703(d)(4); Department of Homeland Security Delegation No. 14000.

Subpart A—Introduction

§ 137.1 Purpose and applicability.

(a) In general under the Oil Pollution Act of 1990 (33 U.S.C. 2701, *et seq.*), an owner or operator of a facility (as defined in § 137.10) that is the source of a discharge, or a substantial threat of discharge, of oil into the navigable waters or adjoining shorelines or the exclusive economic zone is liable for damages and removal costs resulting from the discharge or threat. However, if that person can demonstrate, among other criteria not addressed in this part, that they did not know and had no reason to know at the time of their acquisition of the real property on which the facility is located that oil was located on, in, or at the facility, the person may be eligible for the innocent landowner defense to liability under 33 U.S.C. 2703(d)(4). One element of the defense is that the person made all appropriate inquiries into the nature of the real property on which the facility is located before acquiring it. The purpose of this part is to prescribe standards and practices for making those inquiries.

(b) Under 33 U.S.C. 2703(d)(4)(E), this part does not apply to real property purchased by a non-governmental entity or non-commercial entity for residential use or other similar uses where a property inspection and a title search reveal no basis for further investigation. In those cases, the property inspection and title search satisfy the requirements of this part.

(c) This part does not affect the existing OPA 90 liability protections for State and local governments that acquire a property involuntarily in their functions as sovereigns under 33 U.S.C. 2703(d)(2)(B). Involuntary acquisition of properties by State and local governments fall under the provisions of 33 U.S.C. 2703(d)(2)(B), not under the all-appropriate-inquiries provision of 33 U.S.C. 2703(d)(4) and this part.

§ 137.5 Disclosure obligations.

(a) Under 33 U.S.C. 2703(c)(1), persons specified in § 137.1(a), including environmental professionals, must report the incident as required by law if they know or have reason to know of the incident.

(b) This part does not limit or expand disclosure obligations under any Federal, State, tribal, or local law. It is the obligation of each person, including environmental professionals, conducting inquiries to determine his or her respective disclosure obligations under Federal, State, tribal, and local law and to comply with them.

§ 137.10 How are terms used in this part defined?

(a) The following terms have the same definitions as in 33 U.S.C. 2701: *damages*; *discharge*; *incident*; *liable* or *liability*; *oil*; *owner or operator*; and *removal costs*.

(b) As used in this part—

Abandoned property means a property that, because of its general disrepair or lack of activity, a reasonable person could believe that there is an intent on the part of the current owners to surrender their rights to the property.

Adjoining property means real property the border of which is shared in part or in whole with that of the subject property or that would be shared in part or in whole with that of the property but for a street, road, or other public thoroughfare separating the properties.

Data gap means a lack of, or inability to, obtain information required by subpart B of this part despite good faith efforts by the environmental professional or persons specified in § 137.1(a), as appropriate, to gather the information under § 137.33.

Environmental professional means an individual who meets the requirements of § 137.25.

Facility means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

Good faith means the absence of any intention to seek an unfair advantage or to defraud another party; an honest and sincere intention to fulfill one's obligations in the conduct or transaction concerned.

Institutional controls means non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to oil discharge and/or protect the integrity of a removal action.

Relevant experience means participation in the performance of all-appropriate-inquiries investigations, environmental site assessments, or other site investigations that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located.

§ 137.15 References: Where can I get a copy of the publication mentioned in this part?

Section 137.20 of this part refers to ASTM E 1527–05, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. That document is available from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. It is also available for inspection at the Coast Guard National Pollution Funds Center, 4200 Wilson Boulevard, Suite 1013, Arlington, VA 22203–1804.

Subpart B—Standards and Practices

§ 137.18 Duties of persons specified in § 137.1(a).

In order to make all appropriate inquiries, persons seeking to establish the liability protection under § 137.1(a)

must conduct the inquiries and investigations as required in this part and ensure that the inquiries and investigations required to be made by environmental professionals are made.

§ 137.20 May industry standards be used to comply with this regulation?

The industry standards in ASTM E 1527–05, (Referenced in § 137.15) may be used to comply with the requirements set forth in §§ 137.45 through 137.85 of this part. Use of ASTM E 1527–05 for this purpose is optional and not mandatory.

§ 137.25 Qualifications of the environmental professional.

(a) An environmental professional is an individual who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of the presence or likely presence of oil at a facility and the real property on which the facility is located sufficient to meet the objectives and performance factors in § 137.30(a) and (b).

(1) Such a person must—

(i) Hold a current Professional Engineer's or Professional Geologist's license or registration from a State, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) and have the equivalent of 3 years of full-time relevant experience;

(ii) Be licensed or certified by the Federal government, a State, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries under § 137.35 and have the equivalent of 3 years of full-time relevant experience;

(iii) Have a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of 5 years of full-time relevant experience; or

(iv) Have the equivalent of 10 years of full-time relevant experience.

(2) An environmental professional should remain current in his or her field through participation in continuing education or other activities.

(3) The requirements for an environmental professional in this section do not preempt State professional licensing or registration requirements, such as those for a professional geologist, engineer, or site-remediation professional. Before commencing work, a person should determine the applicability of State professional licensing or registration laws to the activities to be undertaken as part of an inquiry under § 137.35(b).

(4) A person who does not qualify as an environmental professional under this section may assist in the conduct of all appropriate inquiries according to this part if the person is under the supervision or responsible charge of an environmental professional meeting the requirements of this section when conducting the inquiries.

§ 137.30 Objectives and performance factors.

(a) *Objectives.* This part is intended to result in the identification of conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located. In order to meet the objectives of this regulation, persons specified in § 137.1(a) and the environmental professional must seek to identify, through the conduct of the standards and practices in this subpart, the following types of information about the facility and the real property on which the facility is located:

(1) Current and past uses and occupancies of the facility and the real property on which the facility is located.

(2) Current and past uses of oil.

(3) Waste management and disposal activities that indicate presence or likely presence of oil.

(4) Current and past corrective actions and response activities that indicate presence or likely presence of oil.

(5) Engineering controls.

(6) Institutional controls, such as zoning restrictions, building permits, and easements.

(7) Properties adjoining or located nearby the facility and the real property on which the facility is located that have environmental conditions that could have resulted in conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located.

(b) *Performance factors.* In order to meet this part and to meet the objectives stated in paragraph (a) of this section, the persons specified in § 137.1(a) or the environmental professional (as appropriate to the particular standard and practice) must—

(1) Gather the information that is required for each standard and practice listed in this subpart that is publicly available, is obtainable from its source within a reasonable time and cost, and can be reviewed practicably; and

(2) Review and evaluate the thoroughness and reliability of the information gathered in complying with each standard and practice listed in this subpart taking into account information gathered in the course of complying with the other standards and practices of this part.

§ 137.33 General all appropriate inquiries requirements.

(a) All appropriate inquiries must be conducted within 1 year before the date of acquisition of the real property on which the facility is located, as evidenced by the date of receipt of the documentation transferring title to, or possession of, the real property and must include:

(1) An inquiry by an environmental professional, as provided in § 137.35.

(2) The collection of information under § 137.40 by persons specified in § 137.1(a).

(b) The following components of the all appropriate inquiries must be conducted or updated within 180 days before the date of acquisition of the real property on which the facility is located:

(1) Interviews with past and present owners, operators, and occupants. See § 137.45.

(2) Searches for recorded environmental cleanup liens. See § 137.55.

(3) Reviews of Federal, State, tribal, and local government records. See § 137.60.

(4) Visual inspections of the facility, the real property on which the facility is located, and adjoining properties. See § 137.65.

(5) The declaration by the environmental professional. See § 137.35(d).

(c) All appropriate inquiries may include the results of and information contained in an inquiry previously conducted by, or on behalf of, persons specified in § 137.1(a) who are responsible for the inquiries for the facility and the real property on which the facility is located if—

(1) The information was collected during the conduct of an all-appropriate-inquiries investigation under this part.

(2) The information was collected or updated within 1 year before the date of acquisition of the real property on which the facility is located.

(3) The following components of the inquiries were conducted or updated within 180 days before the date of acquisition of the real property on which the facility is located:

(i) Interviews with past and present owners, operators, and occupants. See § 137.45.

(ii) Searches for recorded environmental cleanup liens. See § 137.55.

(iii) Reviews of Federal, State, tribal, and local government records. See § 137.60.

(iv) Visual inspections of the facility, the real property on which the facility is located, and the adjoining properties. See § 137.65.

(v) The declaration by the environmental professional. See § 137.35(d).

(4) Previously collected information is updated by including relevant changes in the conditions of the facility and the real property on which the facility is located and specialized knowledge, as outlined in § 137.70, of the persons conducting the all appropriate inquiries for the facility and the real property on which the facility is located, including persons specified in § 137.1(a) and the environmental professional.

(d) All appropriate inquiries may include the results of an environmental professional's report under § 137.35(c) that have been prepared by or for other persons if—

(1) The reports meet the objectives and performance factors in § 137.30(a) and (b); and

(2) The person specified in § 137.1(a) reviews the information and conducts the additional inquiries under §§ 137.70, 137.75, and 137.80 and updates the inquiries requiring an update under paragraph (b) of this section.

(e) To the extent there are data gaps that affect the ability of persons specified in § 137.1(a) and environmental professionals to identify conditions indicative of the presence or likely presence of oil, the gaps must be identified in the report under § 137.35(c)(2). In addition, the sources of information consulted to address data gaps should be identified and the significance of the gaps noted. Sampling and analysis may be conducted to develop information to address data gaps.

(f) Any conditions indicative of the presence or likely presence of oil identified as part of the all-appropriate-inquiries investigation should be noted in the report.

§ 137.35 Inquiries by an environmental professional.

(a) Inquiries by an environmental professional must be conducted either by the environmental professional or by a person under the supervision or responsible charge of an environmental professional.

(b) The inquiry of the environmental professional must include the requirements in §§ 137.45 (interviews with past and present owners), 137.50 (reviews of historical sources), 137.60 (reviews of government records), 137.65 (visual inspections), 137.80 (commonly known or reasonably ascertainable information) and 137.85 (degree of obviousness of the presence or likely presence of oil). In addition, the inquiry should take into account information provided to the environmental professional by the person specified in § 137.1(a) conducting the additional inquiries under § 137.40.

(c) The results of the inquiry by an environmental professional must be documented in a written report that, at a minimum, includes the following:

(1) An opinion as to whether the inquiry has identified conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located.

(2) An identification of data gaps in the information developed as part of the inquiry that affect the ability of the environmental professional to identify conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located. The report must also indicate whether the gaps prevented the environmental professional from reaching an opinion regarding the identification of conditions indicative of the presence or likely presence of oil.

(3) The qualifications of the environmental professional.

(4) An opinion regarding whether additional appropriate investigation is necessary.

(d) The environmental professional must place the following statements in the written document identified in paragraph (c) of this section and sign the document: ''[I, We] declare that, to the best of [my, our] professional knowledge, [I, we] meet the requirements under 33 CFR 137.25 for an environmental professional.'' and ''[I, We] have the specific qualifications based on education, training, and experience to assess the nature, history, and setting of a facility and the real property on which it is located. [I, We] have developed and conducted all appropriate inquiries according to the standards and practices in 33 CFR part 137.''

§ 137.40 Additional inquiries.

(a) Persons specified in § 137.1(a) must conduct inquiries in addition to those conducted by the environmental professional under § 137.35 and may provide the information associated with these additional inquiries to the environmental professional responsible for conducting the activities listed in § 137.35—

(1) As required by § 137.55 and if not otherwise obtained by the environmental professional, environmental cleanup liens against the facility and the real property on which it is located that are filed or recorded under Federal, State, tribal, or local law.

(2) As required by § 137.70, specialized knowledge or experience of the person specified in § 137.1(a).

(3) As required by § 137.75, the relationship of the purchase price to the fair market value of the facility and the real property on which the facility is located if the oil was not at the facility and the real property on which it is located.

(4) As required by § 137.80 and if not otherwise obtained by the environmental professional, commonly known or reasonably ascertainable information about the facility and the real property on which it is located.

(b) [Reserved]

§ 137.45 Interviews with past and present owners, operators, and occupants.

(a) Interviews with owners, operators, and occupants of the facility and the real property on which the facility is located must be conducted for the purposes of achieving the objectives and performance factors of § 137.30(a) and (b).

(b) The inquiry of the environmental professional must include interviewing the current owner and occupant of the facility and the real property on which the facility is located. If the facility and the real property on which the facility is located has multiple occupants, the inquiry of the environmental professional must include interviewing major occupants, as well as those occupants likely to use, store, treat, handle or dispose of oil or those who have likely done so in the past.

(c) The inquiry of the environmental professional also must include, to the extent necessary to achieve the objectives and performance factors in § 137.30(a) and (b), interviewing one or more of the following persons:

(1) Current and past facility and real property managers with relevant knowledge of uses and physical characteristics of the facility and the real property on which the facility is located.

(2) Past owners, occupants, or operators of the facility and the real property on which the facility is located.

(3) Employees of current and past occupants of the facility and the real property on which the facility is located.

(d) In the case of inquiries conducted at abandoned properties where there is evidence of potential unauthorized uses or evidence of uncontrolled access, the environmental professional's inquiry must include an interview of at least

one owner or occupant of a neighboring property from which it appears possible that the owner or occupant of the neighboring property could have observed use or other presence or likely presence of oil.

§ 137.50 Reviews of historical sources of information.

(a) Historical documents and records must be reviewed for the purposes of achieving the objectives and performance factors of § 137.30(a) and (b). Historical documents and records may include, but are not limited to, aerial photographs, fire insurance maps, building department records, chain of title documents, and land use records.

(b) Historical documents and records reviewed must cover a period of time as far back in the history of the real property to when the first structure was built or when it was first used for residential, agricultural, commercial, industrial, or governmental purposes. The environmental professional may exercise professional judgment in context of the facts available at the time of the inquiry as to how far back in time it is necessary to search historical records.

§ 137.55 Searches for recorded environmental cleanup liens.

(a) All appropriate inquiries must include a search for the existence of environmental cleanup liens against the facility and the real property on which the facility is located that are filed or recorded under Federal, State, tribal, or local law.

(b) All information collected by persons specified in § 137.1(a) rather than an environmental professional regarding the existence of environmental cleanup liens associated with the facility and the real property on which the facility is located may be provided to the environmental professional or retained by the applicable party.

§ 137.60 Reviews of Federal, State, tribal, and local government records.

(a) Federal, State, tribal, and local government records or databases of government records of the facility, the real property on which the facility is located, and adjoining properties must be reviewed for the purposes of achieving the objectives and performance factors of § 137.30(a) and (b).

(b) With regard to the facility and the property on which the facility is located, the review of Federal, State, and tribal government records or databases of the government records and local government records and databases of the records should include—

(1) Records of reported oil discharges present, including site investigation reports for the facility and the real property on which the facility is located;

(2) Records of activities, conditions, or incidents likely to cause or contribute to discharges or substantial threat of discharges of oil, including landfill and other disposal unit location records and permits, storage tank records and permits, hazardous waste handler and generator records and permits, Federal, tribal and State government listings of sites identified as priority cleanup sites, and spill reporting records;

(3) Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) records;

(4) Public health records;

(5) Emergency Response Notification System records;

(6) Registries or publicly available lists of engineering controls; and

(7) Registries or publicly available lists of institutional controls, including environmental land use restrictions, applicable to the facility and the real property on which the facility is located.

(c) With regard to nearby or adjoining properties, the review of Federal, State, tribal, and local government records or databases of government records should include the identification of the following:

(1) Properties for which there are government records of reported discharges or substantial threat of discharges of oil. Such records or databases containing such records and the associated distances from the facility and the real property on which the facility is located for which such information should be searched include the following:

(i) Records of National Priorities List (NPL) sites or tribal- and State-equivalent sites (one mile).

(ii) Resource Conservation and Recovery Act (RCRA) properties subject to corrective action (one mile).

(iii) Records of Federally-registered, or State-permitted or -registered, hazardous waste sites identified for investigation or remediation, such as sites enrolled in State and tribal voluntary cleanup programs and tribal- and State-listed brownfield sites (one-half mile).

(iv) Records of leaking underground storage tanks (one-half mile).

(2) Properties that previously were identified or regulated by a government entity due to environmental concerns at the facility and the real property on which the facility is located. The records or databases containing the records and the associated distances from the facility and the real property on which the facility is located for which the information should be searched include the following:

(i) Records of delisted NPL sites (one-half mile).

(ii) Registries or publicly available lists of engineering controls (one-half mile).

(iii) Records of former CERCLIS sites with no further remedial action notices (one-half mile).

(3) Properties for which there are records of Federally-permitted, State-permitted or -registered, or tribal-permitted or -registered waste management activities. The records or databases that may contain the records include the following:

(i) Records of RCRA small quantity and large quantity generators (adjoining properties).

(ii) Records of Federally-permitted, State-permitted or -registered, or tribal-permitted landfills and solid waste management facilities (one-half mile).

(iii) Records of registered storage tanks (adjoining property).

(4) A review of additional government records with regard to sites identified under paragraphs (c)(1) through (c)(3) of this section may be necessary in the judgment of the environmental professional for the purpose of achieving the objectives and performance factors of §§ 137.30(a) and (b).

(d) The search distance from the real property boundary for reviewing government records or databases of government records listed in paragraph (c) of this section may be modified based upon the professional judgment of the environmental professional. The rationale for the modifications must be documented by the environmental professional. The environmental professional may consider one or more of the following factors in determining an alternate appropriate search distance—

(1) The nature and extent of a discharge.

(2) Geologic, hydrogeologic, or topographic conditions of the property and surrounding environment.

(3) Land use or development densities.

(4) The property type.

(5) Existing or past uses of surrounding properties.

(6) Potential migration pathways (e.g., groundwater flow direction, prevalent wind direction).

(7) Other relevant factors.

§ 137.65 Visual inspections of the facility, real property on which the facility is located, and adjoining properties.

(a) For the purpose of achieving the objectives and performance factors of § 137.30(a) and (b), the inquiry of the environmental professional must include the following:

(1) A visual on-site inspection of the facility and the real property on which the facility is located, and the improvements at the facility and real property, including a visual inspection of the areas where oil may be or may have been used, stored, treated, handled, or disposed. Physical limitations to the visual inspection must be noted.

(2) A visual inspection of adjoining properties, from the subject real property line, public rights-of-way, or other vantage point (e.g., aerial photography), including a visual inspection of areas where oil may be or may have been stored, treated, handled or disposed. A visual on-site inspection is recommended, though not required. Physical limitations to the inspection of adjacent properties must be noted.

(b) Except as in paragraph (c) of this section, a visual on-site inspection of the facility and the real property on which the facility is located must be conducted.

(c) An on-site inspection is not required if an on-site visual inspection of the facility and the real property on which the facility is located cannot be performed because of physical limitations, remote and inaccessible location, or other inability to obtain access to the facility and the real property on which the facility is located after good faith efforts have been taken to obtain access. The mere refusal of a voluntary seller to provide access to the facility and the real property on which the facility is located is not justification for not conducting an on-site inspection. The inquiry of the environmental professional must include—

(1) Visually inspecting the facility and the real property on which the facility is located using another method, such as aerial imagery for large properties, or visually inspecting the facility and the real property on which the facility is located from the nearest accessible vantage point, such as the property line or public road for small properties;

(2) Documenting the efforts undertaken to obtain access and an explanation of why such efforts were unsuccessful; and

(3) Documenting other sources of information regarding the presence or likely presence of oil at the facility and the real property on which the facility is located that were consulted according to § 137.30(a). The documentation should include comments, if any, by the environmental professional on the significance of the failure to conduct a visual on-site inspection of the facility and the real property on which the facility is located with regard to the ability to identify conditions indicative of the presence or likely presence of oil at the facility and the real property.

§ 137.70 Specialized knowledge or experience on the part of persons specified in § 137.1(a).

(a) For the purpose of identifying conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located, persons specified in § 137.1(a) must take into account their own specialized knowledge of the facility and the real property on which the facility is located, the area surrounding the facility and the real property on which the facility is located, and the conditions of adjoining properties and their experience relevant to the inquiry.

(b) The results of all appropriate inquiries under § 137.33 must take into account the relevant and applicable specialized knowledge and experience of the persons specified in § 137.1(a) responsible for undertaking the inquiry.

§ 137.75 The relationship of the purchase price to the value of the facility and the real property on which the facility is located, if oil was not at the facility or on the real property.

(a) Persons specified in § 137.1(a) must consider whether the purchase price of the facility and the real property on which the facility is located reasonably reflects the fair market value of the facility and real property if oil was not present or likely present.

(b) If the persons conclude that the purchase price does not reasonably reflect the fair market value of that facility and real property if oil was not at the facility and the real property, they must consider whether or not the differential in purchase price and fair market value is due to the presence or likely presence of oil.

§ 137.80 Commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located.

(a) Throughout the inquiries, persons specified in § 137.1(a) and environmental professionals conducting the inquiry must take into account commonly known or reasonably ascertainable information within the local community about the facility and the real property on which the facility is located and consider that information when seeking to identify conditions indicative of the presence or likely presence of oil at the facility and the real property.

(b) Commonly known information may include information obtained by the person specified in § 137.1(a) or by the environmental professional about the presence or likely presence of oil at the facility and the real property on which the facility is located that is incidental to the information obtained during the inquiry of the environmental professional.

(c) To the extent necessary to achieve the objectives and performance factors of § 137.30(a) and (b), the person specified in § 137.1(a) and the environmental professional must gather information from varied sources whose input either individually or taken together may provide commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located; the environmental professional may refer to one or more of the following sources of information:

(1) Current owners or occupants of neighboring properties or properties adjacent to the facility and the real property on which the facility is located.

(2) Local and state government officials who may have knowledge of, or information related to, the facility and the real property on which the facility is located.

(3) Others with knowledge of the facility and the real property on which the facility is located.

(4) Other sources of information, such as newspapers, Web sites, community organizations, local libraries, and historical societies.

§ 137.85 The degree of obviousness of the presence or likely presence of oil at the facility and the real property on which the facility is located and the ability to detect the oil by appropriate investigation.

(a) Persons specified in § 137.1(a) and environmental professionals conducting an inquiry of a facility and the real property on which it is located on their behalf must take into account the information collected under §§ 137.45 through 137.80 in considering the degree of obviousness of the presence or likely presence of oil at the facility and the real property on which the facility is located.

(b) Persons specified in § 137.1(a) and environmental professionals conducting an inquiry of a facility and the property on which the facility is located on their behalf must take into account the information collected under §§ 137.45 through 137.80 in considering the

ability to detect the presence or likely presence of oil by appropriate investigation. The report of the environmental professional should include an opinion under § 137.35(c)(4) regarding whether additional appropriate investigation is necessary.

Dated: January 7, 2008.

William Grawe,

Acting Director, National Pollution Funds Center, United States Coast Guard.

[FR Doc. E8–329 Filed 1–11–08; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 20

Undeliverable Items

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service™ has implemented new standards for returned undeliverable-as-addressed items that were posted abroad with a United States return address. When this occurs, the Postal Service provides the return service but currently receives no payment for the services rendered. This final rule implements collection of a fee for returned items.

DATES: *Effective Date:* January 14, 2008.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole, 703–292–5260, Bruce Marsh, 703–292–3570.

SUPPLEMENTARY INFORMATION: Article RL 147 of the Letter Post Regulations of the Universal Postal Union (UPU), ''Undeliverable Items,'' allows all posts to collect handling charges for undeliverable-as-addressed pieces posted abroad by customers residing in their territories. In order to recover costs associated with handling these pieces, the Postal Service will collect the applicable First-Class Mail International postage for each returned item.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

■ Effective the date of this rulemaking the USPS formally adopts the UPU provisions into the *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®), incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

■ 2. Revise the Mailing Standards of the United States Postal Service, International Mail Manual (IMM) as follows:

* * * * *

7 Treatment of Inbound Mail

* * * * *

780 Items Mailed Abroad by or on Behalf of Senders in the United States

[Revise the heading of 781 as follows:]

781 Payment Required

[Add new 781.1 using the current text of 781 as follows:]

781.1 Postage Payment Required

Payment of U.S. Postage is required to secure delivery of mail when the mailing is by or on behalf of a person or firm that is a resident of the United States and the foreign postage rate applied to such items is lower than the comparable U.S. domestic rate.

[Add new 781.2 as follows:]

781.2 Handling Charges

Undeliverable-as-addressed mail returned to the sender for which outbound postage was not paid to the USPS is subject to the payment of handling charges. On delivery to the sender, the sender may be charged the First-Class Mail International rate for the weight and shape of the returned piece.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–392 Filed 1–11–08; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–1010; FRL–8515–6]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revised Motor Vehicle Emission Budgets for the Charleston 8-Hour Ozone Maintenance Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of West Virginia. The revision amends the 8-hour ozone maintenance plan for the Charleston area. This revision amends the maintenance plans' 2009 and 2018 motor vehicle emissions budgets (MVEBs) by reallocating a portion of the plans' safety margins which results in an increase in the MVEBs. The revised plan continues to demonstrate maintenance of the 8-hour national ambient air quality standard (NAAQS) for ozone. EPA is approving this SIP revision to the West Virginia maintenance plan for Charleston in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on March 14, 2008 without further notice, unless EPA receives adverse written comment by February 13, 2008. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–1010 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: febbo.carol@epa.gov.*

C. *Mail:* EPA–R03–OAR–2007–1010, Carol Febbo, Chief, Energy, Radiation and Indoor Environment Branch, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2007–1010. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the

Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, WV 25304.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at *kotsch.martin@epa.gov.*

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

Table of Contents

I. Background
II. Summary of West Virginia's SIP Revision and EPA's Review
III. Final Action
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I. Background

On July 11, 2006 (71 FR 39001) EPA redesignated the Charleston area of West Virginia to attainment for the 8-hour ozone NAAQS. For the Charleston area, the redesignation included approval of an 8-hour ozone maintenance plan, which identifies on-road MVEBs for VOCs and NO_X, which are ozone precursors, which are then used for transportation planning and conformity purposes. Subsequently after the SIP approval by EPA, West Virginia discovered that the MVEBs which were included in the previously approved maintenance plan did not provide a sufficient buffer to account for unforseen future growth or significant changes in the planning assumption data which was used in developing the original MVEBs in its November 2005 submission.

II. Summary of West Virginia's SIP Revision and EPA's Review 2009 and 2018 Motor Vehicle Emission Budgets

On January 8, 2007, the State of West Virginia submitted to EPA a formal revision to its State Implementation Plan (SIP). The SIP revision proposes new MVEBs to reflect the reallocation of a portion of the differences (safety margins) between the total base year and total projected 2009 and 2018 emissions which produces an increase in the MVEBs. The base year is 2004 for the Charleston area. By increasing the MVEBs, the West Virginia Department of Environmental Protection (WVDEP) is ensuring that transportation conformity can be demonstrated in the Charleston area. The January 8, 2007 submittal, while increasing the MVEBs still ensures maintenance of the NAAQS for ozone for the Charleston area.

Tables 1 and 2 and the discussion that follows describes the basis of the new MVEBs for the Charleston area.

TABLE 1.—CHARLESTON AREA REALLOCATION OF SAFETY MARGIN TO THE MVEBS

	2004 base year	2009 projection	2018 projection
Current MVEBs in the Approved Maintenance Plan (Tons/Day)			
VOC	16.1	11.6	7.2
NO_X	26.4	19.8	8.2
Proposed MVEBs in the Revised Maintenance Plan (Tons/Day)			
VOC	16.1	12.9	7.5
NO_X	26.4	22.9	9.5

TABLE 2.—CHARLESTON AREA TOTAL EMISSIONS (POINT, AREA AND MOBILE) BEFORE AND AFTER REALLOCATION OF SAFETY MARGIN TO THE MVEBS (TONS/DAY)

	2004 base year	2009 projection	2018 projection
Current Total Emissions in the Approved Maintenance Plan			
VOC	52.3	46.8	45.1
NO_X	129.4	102.4	80.6
Proposed Total Emissions in the Revised Maintenance Plan			
VOC	52.3	48.1	45.4
NO_X	129.4	105.5	81.9

For the Charleston, West Virginia 8-hour ozone maintenance area addressed herein, the WVDEP recalculated the 2009 and 2018 MVEBs using revised planning data which became available after the original maintenance plan was submitted to EPA on November 30, 2005. The 2009 and 2018 MVEBs for VOCs and NO_X emissions listed above in Table 1 under the Proposed MVEBs in the Revised Maintenance Plan section

will serve as the new MVEBs for transportation conformity planning.

As shown in Table 1, the State has proposed reallocating some of the previous safety margin into the MVEBs for both VOCs and NO_X. The remaining surplus emissions have been reserved as residual safety margins in the total maintenance budgets to ensure continued maintenance of the 8-hour ozone NAAQS.

To explain how the safety margins are determined and allocated, the VOC emissions for the Charleston area may be used as an example. In Table 2, listed under the Current Total Emissions in the Approved Maintenance Plan section, the total 2004 base year VOC emissions are 52.3 tons/day (tpd), which is the maximum amount of VOC emissions consistent with maintenance of the 8-hour ozone NAAQS. The total projected 2009 emissions are 46.8 tpd, which provides a 5.5 tpd VOC safety margin (i.e., the ozone NAAQS would continue to be maintained if total VOC emissions increased as much as 5.5 tpd above the projected 2009 emissions of 46.8 tpd). In the Proposed Total Emissions in the Revised Maintenance Plan section the total projected emissions for 2009 would be increased by 1.3 tpd through the increase in the allowable mobile emissions for VOC while still leaving a safety margin of 4.2 tpd. Therefore, even with the reallocation of some of the current safety margin into the MVEBs, the State of West Virginia has left a safety margin for any other unforseen growth.

III. Final Action

EPA is approving West Virginia's January 8, 2007 SIP revision submittal which amends the 8-hour ozone maintenance plans for the Charleston area. These revisions amend the maintenance plans' 2009 and 2018 MVEBs to reflect the reallocation of a portion of the plans' safety margins which results in an increase in the MVEBs. EPA is approving this SIP revision to the maintenance plan for the Charleston area because the January 8, 2007 submittal continues to demonstrate maintenance of the 8-hour ozone NAAQS. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment, since no significant adverse comments were received on the SIP revision at the State level. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 14, 2008 without further notice unless EPA receives adverse comment by February 13, 2008.

If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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

B. Submission to Congress and the Comptroller General

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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 14, 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 to approve the revised motor vehicle emission budgets for the 8-hour Charleston Maintenance Plan 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 27, 2007.

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 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 XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by revising the entry for the 8-Hour Ozone Maintenance Plan for the Charleston, WV Area at the end of the table to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
8-Hour Ozone Maintenance Plan for the Charleston, WV Area.	Charleston Area (Kanawha and Putnam Counties).	11/30/05	7/11/06 71 FR 39001	
		01/08/07	1/14/08 [Insert page number where the document begins].	Action includes approval of the following new motor vehicle emission budgets (MVEBs): 22.9 tons day (tpd) for 2009 and 9.5 tpd for 2018 for NO_X and 12.9 tpd for 2009 and 7.5 tpd for 2018 for VOC.
*	*	*	*	*

[FR Doc. E8–263 Filed 1–11–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–1149; FRL–8515–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Fredericksburg and Shenandoah National Park 8-Hour Ozone Areas Movement From the Nonattainment Area List to the Maintenance Area List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP) that was submitted on August 14, 2007 by the Commonwealth of Virginia. The revisions move the Fredericksburg and the Shenandoah National Park 8-Hour Ozone Areas from the Nonattainment Area list to the Maintenance Area list. EPA is approving these revisions to move the Fredericksburg 8-Hour Ozone Nonattainment Area (Spotsylvania County, Stafford County, and Fredericksburg City) and the Shenandoah National Park 8-Hour Ozone Nonattainment Area (portions of the park located in Page and Madison Counties) from the list of nonattainment areas to the list of maintenance areas in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on March 14, 2008 without further notice, unless EPA receives adverse written comment by February 13, 2008. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–1149 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: fernandez.cristina@epa.gov.

C. *Mail:* EPA–R03–OAR–2007–1149, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2007–1149. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Melissa Linden, (215) 814–2096, or by e-mail at *linden.melissa@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On September 22, 2004, under the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) the Fredericksburg area and the Shenandoah National Park area were designated as nonattainment areas. The Shenandoah National Park area formally submitted a redesignation request on September 21, 2005 along with a maintenance plan on September 23, 2005. On January 3, 2006, (71 FR 24) the U.S. Environmental Protection Agency (EPA) published the final rulemaking actions approving the redesignation of the Shenandoah National Park from nonattainment of the 8-Hour Ozone Standard to attainment. The Fredericksburg area formally submitted a redesignation request on May 2, 2005 along with a maintenance plan on May 4, 2005. On December 23, 2005, (70 FR 76165) the U.S. Environmental Protection Agency (EPA) published the final rulemaking actions approving the redesignation of the Fredericksburg area from nonattainment of the 8-Hour Ozone Standard to attainment. Both redesignations were done in accordance with the Clean Air Act section 107(d)(3)(E).

II. Summary of SIP Revision

On August 14, 2007, the Commonwealth of Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a regulatory change that moves the Fredericksburg 8-Hour Ozone Nonattainment Area and the Shenandoah National Park 8-Hour Ozone Nonattainment Area from the list of nonattainment areas to the list of maintenance areas. The purpose of Virginia's State Implementation Plan revision consists of a regulatory change to move the Fredericksburg 8-Hour Ozone Nonattainment Area (Spotsylvania County, Stafford County, and Fredericksburg City) and the Shenandoah National Park 8-Hour Ozone Nonattainment Area (portions of the park located in Page and Madison Counties) from the list of nonattainment areas found in regulation 9 VAC 5–20–204 to the list of maintenance areas found in regulation 9 VAC 5–20–203.

III. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the Commonwealth's request to move the Fredericksburg area and the Shenandoah National Park area from 8-Hour Ozone Nonattainment list to the 8-Hour Ozone Maintenance list.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal**

Register, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 14, 2008 without further notice unless EPA receives adverse comment by February 13, 2008. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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

B. Submission to Congress and the Comptroller General

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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *March 14, 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 to approve the revision to move the Fredericksburg area and the Shenandoah National Park area from the 8-Hour Ozone Nonattainment list to the 8-Hour Ozone Maintenance list 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, Nitrogen oxides, Ozone, Recordkeeping and reporting requirements, Volatile organic compounds.

Dated: December 27, 2007.

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for Chapter 20, section 5–20–203 and 5–20–204 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Chapter 20	General Provisions.			
*	*	*	*	*
Part II	Air Quality Programs.			
*	*	*	*	*
5–20–203	Air Quality Maintenance Areas	09/01/06	01/14/08 [Insert page number where the document begins].	Fredericksburg and Shenandoah 8-Hour Ozone Areas are added.
5–20–204	Nonattainment Areas	09/01/06	01/14/08 [Insert page number where the document begins].	Fredericksburg and Shenandoah 8-Hour Ozone Areas are deleted.
*	*	*	*	*

* * * * *

[FR Doc. E8–265 Filed 1–11–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0175; EPA–R03–OAR–2007–0476; EPA–R03–OAR–2007–0344; FRL–8515–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of 8-Hour Ozone Nonattainment Areas to Attainment and Approval of the Areas' Maintenance Plans and 2002 Base-Year Inventories; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects an error in the preamble language of the final rules pertaining to EPA's approval of the redesignation of Reading, Erie, and Youngstown 8-hour ozone nonattainment areas to attainment, maintenance plans and 2002 base year inventories submitted by the Commonwealth of Pennsylvania.

DATES: *Effective Date:* January 14, 2008.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182 or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'' or ''our'' are used we mean EPA. On August 24, 2007 (72 FR 48559); October 9, 2007 (72 FR 57207); and October 19, 2007 (72 FR 59213), we published final rulemaking actions announcing our approval and promulgation of Pennsylvania's redesignation of the Reading, Erie, and Youngstown 8-hour ozone nonattainment areas to attainment and approval of the associated maintenance plans and 2002 base year inventories, respectively. In these documents, EPA inadvertently printed the incorrect data in a table entitled, Adequate and Approved Motor Vehicle Emission Budgets (MVEBs) in tons per day (tpd) for 2009 and 2018. This action corrects the tables in the final rulemaking actions reflecting the correct data for the 2009 and 2018 MVEBs for Reading, Erie, and Youngstown Areas.

Corrections

(1) Reading, Berks County, Pennsylvania Ozone Nonattainment Area (Reading Area)

In rule document E7–16683, on page 48561, the table is corrected as follows:

ADEQUATE AND APPROVED MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)

Budget year	NO_X	VOC
2009	21.3	13.1
2018	9.0	7.5

(2) Erie County, Pennsylvania Ozone Nonattainment Area (Erie Area)

In rule document E7–19633, on page 57208, the table is corrected as follows:

ADEQUATE AND APPROVED MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)

Budget year	NO_X	VOC
2009	6.9	16.1
2018	4.5	7.3

(3) Mercer County Portion of the Youngstown-Warren-Sharon, OH–PA Ozone Nonattainment Area (Youngstown Area)

In rule document E7–20567, on page 59214, the table is corrected as follows:

ADEQUATE AND APPROVED MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)

Budget Year	NO_X	VOC
2009	4.5	11.6
2018	3.0	5.3

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because this rule is not substantive and imposes no regulatory requirements, but merely corrects a citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore 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)). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does 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), nor will it 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

This technical correction action does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of January 14, 2008. 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**. These corrections to the tables on the MVEBs for Reading, Erie, and Youngstown, Pennsylvania are not ''major rules'' as defined by 5 U.S.C. 804(2).

Dated: December 27, 2007.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E8–277 Filed 1–11–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0625; FRL–8515–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the York (York and Adams Counties) 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the York (York and Adams Counties) ozone nonattainment area (York Area) be redesignated as attainment for the 8-hour ozone ambient air quality standard (NAAQS). EPA is approving the ozone redesignation request for York Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for York Area, which EPA is

approving, that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is also approving the motor vehicle emission budgets (MVEBs) and the adequacy determination for those MVEBs that are identified in the York Area maintenance plan for purposes of transportation conformity. In addition, EPA is approving the 2002 base year inventory for the York Area that PADEP submitted. EPA is approving the redesignation request, the maintenance plan, and the 2002 base year emissions inventory as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on February 13, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0625. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (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 through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environment Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 24, 2007 (72 FR 60296), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania's redesignation request and maintenance plan SIP revisions for the York Area that provide for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. The NPR also proposed approval of a 2002 base year emissions inventory for the York Area. The formal SIP revisions were submitted by PADEP on June 14, 2007. Other specific requirements of Pennsylvania's redesignation request and maintenance plan SIP revisions, and the rationales for EPA's proposed actions, are explained in the NPR and will not be restated here. No public comments were received on the NPR.

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23591, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C.Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist.* v. *EPA,* Docket No. 04–1201, in response to several petitions for rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for the 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain NAAQS. In addition, the June 8 decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of the 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified the 1-hour conformity determinations are not required for anti-backsliding purposes.

For the reasons set forth in the proposal, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in the light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

II. Final Action

EPA is approving the Commonwealth of Pennsylvania's redesignation request, maintenance plan, and 2002 base year emissions inventory SIP revisions because they satisfy the requirements for approval. EPA has evaluated Pennsylvania's redesignation request that was submitted on June 14, 2007 and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the York Area has attained the 8-hour ozone standard. The final approval of this redesignation request will change the designation of the York Area from nonattainment to attainment for the 8-hour ozone standard. EPA is approving the maintenance plan for the York Area submitted on June 14, 2007 as a revision to the Pennsylvania SIP. EPA is also approving the MVEBs submitted by PADEP in conjunction with its redesignation request. In addition, EPA is approving the 2002 base year emissions inventory submitted by PADEP on June 14, 2007 as a revision to the Pennsylvania SIP. In this final rulemaking, EPA is notifying the public that we have found that the MVEBs for NO_X and VOCs in the York Area for the 8-hour ozone maintenance plan are adequate and approved for conformity purposes. As a result of our finding, the York Area must use the MVEBs from the submitted 8-hour ozone maintenance plan for future conformity determinations. The adequate and approved MVEBs are provided in the following table:

ADEQUATE AND APPROVED MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)

Budget year	VOC	NO_X
2009	15.9	22.8
2018	9.0	10.0

The York Area is subject to the CAA's requirement for the basic nonattainment areas until and unless it is redesignated to attainment.

III. Statutory and Executive Order Reviews

A. General Requirements

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. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This final rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Because this action affects the status of a geographical area, does not impose any new requirements on sources, or allows the state to avoid adopting or implementing other requirements, 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 requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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

B. Submission to Congress and the Comptroller General

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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *March 14, 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, approving the redesignation of the York Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the MVEBs identified in the maintenance plan and the 2002 base year emission inventory, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 27, 2007.

William T. Wisniewski,

Acting Regional Administrator, Region III.

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

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State sub-mittal date	EPA approval date	Additional explanation
* *	* *		* *	*
8-Hour Ozone Maintenance Plan and 2002 Base Year Emissions Inventory.	York, PA: Adams County, York County.	06/14/07.	*01/14/08*, [Insert page number where the document begins].	

* * * * *

PART 81—[AMENDED]

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

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

■ 4. In § 81.339, the table entitled ''Pennsylvania—Ozone (8-Hour Standard)'' is amended by revising the entry for York, PA, Adams County and York County to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA-OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
York, PA: Adams County, York County	*02/13/08*	Attainment.		

[a] Includes Indian County located in each county or area, except otherwise noted.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. E8–268 Filed 1–11–08; 8:45 am]
BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–72

[FMR Amendment 2008–02; FMR Case 2007–102–5]

RIN 3090–AI44

Federal Management Regulation; Delegated Leasing Authority, Real Property Policies Update

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration is amending the Federal Management Regulation (FMR) to limit General Purpose leasing delegations for space acquisitions up to a maximum of 19,999 rentable square feet.

DATES: *Effective Date:* January 14, 2008.

FOR FURTHER INFORMATION CONTACT The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Stanley C. Langfeld, Director, Regulations Management Division, Office of Governmentwide Policy, General Services Administration, at (202) 501–1737, or by e-mail at *Stanley.langfeld@gsa.gov*. Please cite FMR case 2007–102-5, Amendment 2008–02.

SUPPLEMENTARY INFORMATION:

A. Background

The Government Accountability Office and the General Services Administration Office of Inspector General have reported that some Federal agencies using the delegated leasing authority issued to Federal agencies on September 25, 1996, are not following properly the instructions specified as a condition for use of the leasing delegation. To address the concerns raised by these audits, to facilitate compliance with all applicable laws and regulations governing the acquisition of real property leasehold interests, and to minimize risk to the Federal Buildings Fund, GSA will no longer authorize General Purpose leasing delegations for space acquisitions in excess of 19,999 rentable square feet.

B. Executive Order 12866

The General Services Administration has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801, since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–72

Delegations of Authority

Dated: December 14, 2007.

Lurita A. Doan

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR § 102–72 as set forth below:

PART 102–72—DELEGATION OF AUTHORITY

■ 1. The authority citation for 41 CFR part 102–72 continues to read as follows:

Authority: 40 U.S.C. 121(c), (d) and (e).

■ 2. Amend § 102–72.30 by revising the first sentence of paragraph (b) to read as follows:

§ 102–72.30 What are the different types of delegations related to real estate leasing?

* * * * *

(b) The Administrator of General Services has issued a standing delegation of authority (under a program known as ''Can't Beat GSA Leasing'') to the heads of all Federal agencies to accomplish all functions relating to leasing of up to 19,999 rentable square feet of general purpose space for terms of up to 20 years and below prospectus level requirements, regardless of geographic location. * * *

* * * * *

[FR Doc. E8–438 Filed 1–11–08; 8:45 am]

BILLING CODE 6820–14–S

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–84

[FMR Amendment 2008–01; FMR Case 2007–102–3]

RIN 3090–AI42

Federal Management Regulation; Real Property Policies Update

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is amending the Federal Management Regulation (FMR) to update the legal citations and to incorporate additional policy guidance in accordance with Executive Order 13327. This final rule cancels and replaces in its entirety 41 CFR part 102–84, issued December 13, 2002.

DATES: *Effective Date:* January 14, 2008.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Stanley C. Langfeld, Director, Regulations Management Division, Office of Governmentwide Policy, General Services Administration, at (202) 501–1737, or by e-mail at *Stanley.langfeld@gsa.gov.* The Regulatory Secretariat, General Services Administration, Room 4035, GS Building, 1800 F Street, NW., Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FMR case 2007–102–3, Amendment 2008–01.

SUPPLEMENTARY INFORMATION:

A. Background

On December 13, 2002, GSA published Federal Property Management Regulation (FPMR) Amendment D–99 as a final rule in the **Federal Register** (67 FR 76882), which removed all real property policy coverage from the FPMR and provided cross-references that directed readers to the coverage in the Federal Management Regulation (FMR).

On February 4, 2004, the President signed Executive Order 13327, Federal Real Property Asset Management, requiring that the Administrator of General Services, in consultation with the Federal Real Property Council, establish and maintain a single, comprehensive database of all real property under the custody and control of all executive branch agencies, except when otherwise required for reasons of national security.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801, since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–84

Annual Real Property Inventory.

Dated: November 27, 2007.

Lurita A. Doan,

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA is revising in its entirety 41 CFR part 102–84 as set forth below:

PART 102–84—ANNUAL REAL PROPERTY INVENTORIES

Sec.

102–84.5 What is the scope of this part?
102–84.10 What is the purpose of the Annual Real Property Inventory program?
102–84.15 Why must I provide information for the Annual Real Property Inventory?
102–84.20 Where should I obtain the data required to be reported for the Annual Real Property Inventory?
102–84.25 Is it necessary for my agency to designate an official to serve as the point of contact for the real property inventories?
102–84.30 Is it necessary for my agency to certify the accuracy of its real property inventory submission?
102–84.35 Which agencies must submit a report for inclusion in the Annual Real Property Inventory?
102–84.40 What types of real property must I report for the Annual Real Property Inventory?
102–84.45 What types of real property are excluded from reporting for the Annual Real Property Inventory?
102–84.50 May the GSA Form 1166 be used to report information?
102–84.55 When are the Annual Real Property Inventory Reports due?

Authority: 40 U.S.C. 121(c)

§ 102–84.5 What is the scope of this part?

GSA's policies contained in this part apply to all Federal agencies. This part prescribes guidance that all Federal agencies must follow in preparing and submitting annual real property inventory information for real property owned, leased or otherwise managed by the United States. Detailed guidance implementing these policies is contained in the annual *Guidance for Real Property Inventory Reporting,* issued by the Federal Real Property Council and published by GSA.

§ 102–84.10 What is the purpose of the Annual Real Property Inventory program?

The purpose of the Annual Real Property Inventory program is to:

(a) Promote efficient and economical use of Federal real property assets.

(b) Increase the level of agency accountability for asset management.

(c) Allow for comparing and benchmarking across various types of real property assets.

(d) Give decision makers the accurate, reliable data needed to make asset management decisions, including disposing of unneeded federal assets.

§ 102–84.15 Why must I provide information for the Annual Real Property Inventory?

You must provide information for the Annual Real Property Inventory because:

(a) The Senate Committee on Appropriations requests that the Government maintain an Annual Real Property Inventory.

(b) Executive Order 12411, Government Work Space Management Reforms, dated March 29, 1983 (48 FR 13391, 3 CFR, 1983 Comp., p. 155), requires that Executive agencies:

(1) Produce and maintain a total inventory of work space and related furnishings and declare excess to the

Administrator of General Services all such holdings that are not necessary to satisfy existing or known and verified planned programs; and

(2) Establish information systems, implement inventory controls and conduct surveys, in accordance with procedures established by the Administrator of General Services, so that a governmentwide reporting system may be developed.

(c) Executive Order 13327, *Federal Real Property Asset Management*, dated February 4, 2004, requires that the Administrator of General Services, in consultation with the Federal Real Property Council, establish and maintain a single, comprehensive and descriptive database of all real property under the custody and control of all executive branch agencies, except when otherwise required for reasons of national security. The Executive Order authorizes the Administrator to collect from each Executive agency such descriptive information, except for classified information, as the Administrator considers will best describe the nature, use, and extent of the real property holdings of the Federal Government.

§ 102–84.20 Where should I obtain the data required to be reported for the Annual Real Property Inventory?

You should obtain data reported for the Annual Real Property Inventory from the most accurate real property asset management and financial management records maintained by your agency.

§ 102–84.25 Is it necessary for my agency to designate an official to serve as the point of contact for the real property inventories?

Yes. You must designate an official to serve as your agency's point of contact for the Annual Real Property Inventories. We recommend that you designate the same point of contact for the Federally-owned and leased real property inventory, although separate points of contact are permitted. You must advise the General Services Administration, Office of Governmentwide Policy, Office of Real Property (MP), 1800 F Street, NW., Washington, DC 20405, in writing, of the name(s) of these representative(s) and any subsequent changes.

§ 102–84.30 Is it necessary for my agency to certify the accuracy of its real property inventory submission?

Yes. Your agency's official designated in accordance with § 102–84.25 must certify the accuracy of the real property information submitted to GSA.

§ 102–84.35 Which agencies must submit a report for inclusion in the Annual Real Property Inventory?

Each agency that has jurisdiction, custody, control, or otherwise manages Federal real property or enters into leases, is responsible for submitting the real property inventory information. Additional information on the responsibility for reporting inventory data is contained in the annual Guidance for Real Property Inventory Reporting.

§ 102–84.40 What types of real property must I report for the Annual Real Property Inventory?

You must report for the Annual Real Property Inventory all land, buildings, and other structures and facilities owned by the United States (including wholly-owned Federal Government corporations) throughout the world, all real property leased by the United States from private individuals, organizations, and municipal, county, State, and foreign governments, and all real property otherwise managed by the United States where the ownership interest is held by a State or foreign government. Property to be reported includes, but is not limited to:

(a) Real property acquired by purchase, construction, donation, eminent domain proceedings, or any other method;

(b) Real property in which the Government has a long-term interest considered by the reporting agency as being equivalent to ownership. This would include land acquired by treaty or long-term lease (*e.g.*, 99-year lease), and that your agency considers equivalent to Federally-owned land;

(c) Buildings or other structures and facilities owned by or leased to the Government, whether or not located on Government-owned land;

(d) Excess and surplus real property;

(e) Leased real property (including leased land, leased buildings, leased other structures and facilities, or any combination thereof);

(f) Real property leased rent free or for a nominal rental rate, if the real property is considered significant by the reporting agency; and

(g) Real property where title is held by a State or foreign government, but rights for use have been granted to a Federal entity in an arrangement other than a leasehold.

§ 102–84.45 What types of real property are excluded from reporting for the Annual Real Property Inventory?

The following real property assets are excluded from Executive Order 13327 and reporting is optional:

(a) Land easements or rights-of-way held by the Federal Government.

(b) Public domain land (including lands withdrawn for military purposes) or land reserved or dedicated for national forest, national park, or national wildlife refuge purposes, except for improvements on those lands.

(c) Land held in trust or restricted-fee status for individual Indians or Indian tribes.

(d) Land, and interests in land, that are withheld from the scope of Executive Order 13327 by agency heads for reasons of national security, foreign policy or public safety.

§ 102–84.50 May the GSA Form 1166 be used to report information?

No. Agencies must submit information in accordance with the electronic format outlined in the annual reporting instructions by either submitting an XML file in a predetermined format or by entering the data manually into the online Federal Real Property Profile system. For more information on format requirements, or any other information and guidance on the Annual Real Property Inventory, contact GSA's Office of Governmentwide Policy, Office of Real Property (MP), 1800 F Street, NW., Washington, DC 20405, or by telephone at (202) 501–0856.

§ 102–84.55 When are the Annual Real Property Inventory reports due?

You must prepare the Annual Real Property Inventory information prescribed in § 102–84.50 as of the last day of each fiscal year. This information must be submitted electronically to the General Services Administration, Office of Governmentwide Policy, Office of Real Property (MP), 1800 F Street, NW., Washington, DC 20405, no later than December 15 of each year.

[FR Doc. E8–439 Filed 1–11–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 563

[Docket No. NHTSA–2008–0004]

RIN 2127–AK12

Event Data Recorders

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In August 2006, NHTSA published a final rule specifying uniform requirements for the accuracy, collection, storage, survivability, and retrievability of onboard motor vehicle crash event data in passenger cars and other light vehicles voluntarily equipped with event data recorders (EDRs). The final rule was intended to standardize the data collected through EDRs so that it could be put to the most effective future use. This document responds to several petitions for reconsideration of the August 2006 rule. After carefully considering the issues raised, the agency is granting some aspects of the petitions, and denying some aspects. This document amends the final rule accordingly.

DATES: *Effective Date:* The amendments in this rule are effective March 14, 2008.

Compliance Dates: Except as provided below, light vehicles manufactured on or after September 1, 2012 that are equipped with an EDR and manufacturers of those vehicles must comply with this rule. However, vehicles that are manufactured in two or more stages or that are altered are not required to comply with the rule until September 1, 2013. Voluntary compliance is permitted before that date.

Petitions: If you wish to submit a petition for reconsideration of this rule, your petition must be received by February 28, 2008.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, 4th Floor, Washington, DC 20590. Please see the Privacy Act heading under Regulatory Notices.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues, contact David Sutula, Office of Crashworthiness Standards, by telephone at (202) 366–1740, or by fax at (202) 493–2739.

For legal issues, contact Rebecca Schade, Office of the Chief Counsel, by telephone at (202) 366–2992, or by fax at (202) 366–3820.

Both persons may be reached by mail at the following address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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I. Summary of the Final Rule; Responses to Petitions for Reconsideration

In this document, NHTSA responds to petitions for reconsideration of its August 2006 final rule concerning EDRs. That rule specified uniform requirements for the accuracy, collection, storage, survivability, and retrievability of onboard motor vehicle crash event data in passenger cars and other light vehicles voluntarily equipped with event data recorders (EDRs).

We are granting a number of the petitions in part. In granting these petitions, today's final rule makes several changes to the regulatory text of 49 CFR part 563, *Event Data Recorders.* These are largely technical changes, all of which are consistent with agency's goal in the original final rule of limiting the requirements to those necessary to achieve our stated purposes, reflecting current EDR technology, and avoiding unnecessary costs. Changes to the regulatory text are summarized below.

We are denying a petition from Public Citizen asking that we require EDRs, include requirements for additional data elements, and increase the stringency of the data survivability requirements. We are also denying a request from Mr. Thomas Kowalick that we require inclusion of a mechanical lockout port to prevent EDR data tampering.

Summary of Changes

1. In order to avoid vehicle manufacturers incurring significant additional costs, unintended by the final rule, to redevelop EDR system architectures outside the normal product cycle, § 563.3 is being amended to include a later compliance date. Specifically, the compliance date will generally be September 1, 2012, but September 1, 2013 for vehicles that are manufactured in two or more stages or that are altered after having been previously certified to the FMVSS. This change will also allow the agency to continue to collect data from vehicles with EDRs that do not meet the full requirements of the final rule.

2. To avoid EDR data being filtered beyond usefulness, the agency is removing the Society of Automotive Engineers (SAE) J211–1 filter class from Table III of § 563.8 and from incorporation by reference in § 563.4. The agency agrees, based on additional information, that current technology EDRs on the market are able to filter data internally, and an additional filtering step is usually unnecessary if not unhelpful.

3. To clarify the final rule more fully, the agency is adding definitions in § 563.5 for ''maximum delta–V, resultant'' and ''time, maximum delta–V, resultant,'' and amending the definitions for ''end of event time,'' ''engine RPM,'' ''event,'' and ''time zero.''

4. To clarify the definition and permissible uses of the frontal air bag warning lamp, and to clarify that the ignition cycle at time of download need only be reported during the download process, footnotes are being added to Table I in § 563.7.

5. As petitioners pointed out to the agency, the SAE standard on which Part 563 was originally based contained standards for *reporting* rather than *recording* data elements. To avoid requiring EDRs to function at levels well beyond those necessary for the purposes of the final rule, § 563.8 and Table III are being amended to clarify that the format specified is for reported, not recorded, data elements.

6. As written in the final rule, § 563.9 required EDRs to erase recorded data before beginning to record new data of an air bag deployment. This consumes EDR system resources and time, which may be needed to record a closely-

following second deployment event, and in long events, the EDR may inappropriately process and prioritize event data. We are amending § 563.9 to allow the EDR to ''overwrite'' rather than erase previous event data contained in the EDR memory buffers, and to clarify how the EDR should prioritize multiple events and events involving deployable restraint systems other than air bags.

II. EDR Background

Event data recorders are a rapidly developing technology used in a variety of transportation modes to collect crash information. In motor vehicles, that information aids NHTSA in improving our understanding of crash events and safety system performance. Ideally, it can help manufacturers to develop future safer vehicle designs and NHTSA to develop more effective safety regulations. EDR data will also likely play an increasing role in advancing developing networks for providing emergency medical services, like automatic crash notification (ACN) and electronic 9–1–1 (e–911).

As a technology, EDRs have experienced dramatic changes in the past decade, both in terms of their technical capabilities and their penetration into vehicle fleets. EDRs today demonstrate a range of features: Some systems collect only vehicle acceleration and deceleration data, but others collect these plus additional complementary data, such as driver inputs (like braking and steering) and vehicle system status. NHTSA's challenge has been to encourage broad application of EDR technologies in motor vehicles and maximize the usefulness of EDR data for vehicle designers, researchers, and the medical community, without imposing unnecessary burdens or deterring future improvements to EDRs that have been voluntarily installed.

For much more background information on EDR technologies, please see the NPRM and the final rule, at 69 FR 32932 (June 14, 2004) [1] and 71 FR 50998 (August 28, 2006),[2] respectively.

III. Discussion and Analysis of Responses to Petitions for Reconsideration

The agency received eight petitions for reconsideration in response to the final rule. Petitions were received from two vehicle manufacturer associations, the Alliance of Automobile Manufacturers (Alliance) and the Association of International Automobile Manufacturers (AIAM); two individual vehicle manufacturers, Nissan and Toyota; a manufacturer of EDR components, Delphi Corporation; the Automotive Occupant Restraints Council (AORC); Public Citizen; and one private citizen, Mr. Thomas M. Kowalick. We note that letters were also received from the American Automobile Association (AAA) and 433 private citizens.

In addition, the agency held ex parte meetings with AORC, the Alliance, Toyota, GM, Hyundai, and Mr. Kowalick.[3] AORC, the Alliance, Toyota, GM, and Mr. Kowalick each explained their concerns and outlined their petitions for reconsideration. Hyundai asked for clarification of the provisions of the rule, but did not submit any information or requests for the agency to consider.

The petitions and comments expressed concerns with the following general areas of the rule: event storage, data format, sensor accuracy and range, data survivability and retrievability, required data elements, lead time, and public privacy and notification. The sections below examine each topic in turn, discussing the petitions and explaining the agency's response.

A. Event Data Storage

Petitioners' requests on storage of crash event data in EDRs involved three topics: Data storage in the case of multiple event scenarios, event recording intervals, and reusability of EDRs with ''locked'' data.

1. Storage of Multiple Events

AORC [4] petitioned NHTSA to clarify the ''end of event'' criteria, arguing that as the final rule was written, the definition of multiple event storage and delta–V ''trigger threshold'' would allow the EDR to record overlapping or incomplete event data. It further argued that once the end of event criteria is reached, there is no further useful data to obtain. AORC also petitioned NHTSA to redefine the trigger threshold to limit the start of an event to ''a 150 ms interval, or the time since the most recent time zero, whichever is shorter,'' in order to avoid the EDR capturing non-events. Allowing the EDR to cease recording once the criteria is reached will conserve microprocessor resources, and prevent incomplete recording of subsequent significant events. AORC suggested that this would prevent the accumulation of multiple insignificant events (such as pothole events) that may have a net cumulative delta–V in excess of 8 km/h.

The Alliance [5] petitioned NHTSA to rewrite § 563.9 to clarify the criteria for overwriting data and to address the event data storage criteria for multiple events. The Alliance mentioned three specific concerns with Part 563's data capture provisions. First, the Alliance stated that the language contradicts itself by stating that air bag deployment data must be locked to prevent overwriting by a future event, while also requiring that all previous data be removed from the EDR with the occurrence of either a deployment or a non-deployment event. Second, the Alliance argued that the erasure requirement is not needed—if an EDR has two non-volatile buffers,[6] only one of which is occupied with data from a previous event, the erasure requirement would reduce the amount of useful information held by the EDR and consume crucial processing time to perform. And third, the Alliance requested clarification as to what NHTSA meant by ''an air bag deployment crash,'' given the existence of other deployable restraints with lower deployment thresholds.

The Alliance recommended that § 563.9 be re-written as follows:

> ''The EDR must capture and record the data elements for events in accordance with the following conditions and circumstances:
>
> (a) In a frontal or side air bag deployment crash, capture and record the current deployment data, up to two events.
>
> (b) In a deployment event that involves another type of deployable restraint (*e.g.*, pretensioners, knee bolsters, pedestrian protection, etc.), or in a non-deployment event that meets the trigger threshold, capture and record the current non-deployment data, up to two events, subject to the following conditions:
>
> (1) If an EDR non-volatile memory buffer void of previous-event data is available, the current non-deployment event data is recorded in the buffer.
>
> (2) If an EDR non-volatile memory buffer void of previous event data is not available, the manufacturer may choose to either overwrite the previous non-deployment event data with the current non-deployment event data, or to not record the current non-deployment data.
>
> (3) EDR buffers containing previous deployment-event data must not be overwritten by the current non-deployment event data.''

The Alliance argued that this rewrite would clarify the apparent contradiction and ensure that NHTSA would receive the highest-interest event data.

[1] Docket No. NHTSA–2004–18029.

[2] Docket No. NHTSA–2006–25666.

[3] NHTSA's records of these meetings are available at Docket No. NHTSA–2006–25666.

[4] Docket No. NHTSA–2006–25666–436.

[5] Docket No. NHTSA–2006–25666–441.

[6] A non-volatile buffer temporarily stores data until the EDR is ready to receive or process it into semi-permanent memory. Many current technology EDRs do have two non-volatile buffers.

Additionally, according to that petition, manufacturers would be able to prioritize the significance of non-deployment event data based on the varying deployment level thresholds for other restraint systems. Toyota [7] supported the Alliance petition.

AIAM [8] argued that although EDRs may be capable of recording multiple events, they may only do so if the external power source and sensors are not damaged in the first event, and petitioned the agency to clarify this. Nissan [9] supported the AIAM petition.

Agency response: We are granting the Alliance's petition to clarify § 563.9, but we are not adopting its definition verbatim. The final rule required EDRs to record only two events. To ensure that air bag deployment events were properly recorded, the agency required that previous data be erased from memory buffers prior to recording the deployment event. The agency adopted the ''end of event'' definition in SAE J1698–1, *Vehicle Event Data Interface—Output Data Definition* (March 2005) to provide a distinction between when the first event had ended and the second event began.

However, the erasure process consumes EDR system resources and time, which may be needed to record a closely-following second deployment event. In addition, during some multiple events, the timing of event triggers may appear to the EDR as one long event. This may cause the EDR to process and prioritize event data inappropriately.

To address this problem, we are adopting most of the Alliance's recommended rewrite of § 563.9. The EDR will be permitted to ''overwrite'' rather than erase previous event data contained in the EDR memory buffers. The revised § 563.9 will also clarify how the EDR must prioritize multiple events and events involving deployable restraint systems other than air bags. Finally, by allowing the EDR to overwrite data, the revision will also address the AORC concerns about multiple event timing and the potential for double buffering (unintentionally recording the same event twice) or recording of insignificant data. We are including a requirement that the data from an air bag deployment event remain locked,[10] in order to discourage tampering. Thus, we are changing § 563.9(a), to read:

(a) In a frontal or side air bag deployment crash, capture and record the current deployment data, up to two events. *The memory for each air bag deployment event must be locked to prevent any future overwriting of these data.*

The revision also addresses AORC's concern about the trigger threshold, because the revised regulatory text permits the EDR algorithm to define on its own when the end of event has occurred. Thus, the EDR could capture the 150 ms pre-event interval in a new memory buffer, while ceasing to record the previous event. In this case, the full set of data from the deployment event would be captured, and the data from the prior event would be contained in a second memory buffer.

We agree with AIAM that subsequent events need not be recorded if the external power source and sensors are damaged in the first event, but we do not believe that a change to the regulatory text is necessary. The regulation does not contain test requirements to determine if an EDR could survive two consecutive severe crashes. For the test requirements which are included, if an event is severe enough to interrupt the power source to the EDR, the EDR must be able to finish capturing that event, but is not required to be in a condition such that it could capture subsequent events.

2. Event Recording Intervals

AORC petitioned NHTSA to clarify that an air bag deployment is itself a trigger, even in the absence of a delta–V trigger. AORC recommended modifying the definition for ''time zero'' to account for this, and to modify the definition of ''end of event'' to allow for both a delta–V end of event and air bag control unit reset.

The Alliance also petitioned NHTSA to clarify that an air bag deployment is itself a trigger, and recommended modifying the definition of ''time zero'' and ''event'' accordingly. The Alliance argued that a strict reading of the existing ''event'' definition could preclude a manufacturer from recording cases in which an air bag deploys (due to shock to the vehicle) even though the trigger threshold was not exceeded. In these cases, it would be important to have EDR data to evaluate air bag performance.

Toyota supported the Alliance petition and petitioned for clarification of the ''end of event'' definition. Toyota argued for a ''judgment period'' of 30 ms to identify the actual end of the event in the case of a crash where the cumulative delta–V hovers near 0.8 km/h. The judgment period would enable the EDR to determine whether a true end of event has occurred, or whether the previous event has simply continued.

AIAM stated that the delta–V recording intervals specified in Tables I and II do not agree with the final rule preamble. The maximum delta–V recording intervals in the tables are specified as 0–300 ms, but the preamble stated that NHTSA believed that a 250 ms recording time would be sufficient for 95 percent of the event cases. AIAM urged the agency to reconcile the language. Nissan supported the AIAM petition.

Agency response: We are granting the petitions to clarify that an air bag deployment may be considered an event trigger by itself. In the final rule, the agency had decided not to adopt a recommendation to tie the trigger threshold to an air bag deployment because we believed that using a set delta–V trigger would better collect the type of information that the agency was most interested in, namely high delta–V crashes irrespective of air bag deployment. We were concerned that tying the trigger threshold to air bag deployment could result in different thresholds depending on manufacturer deployment strategies and vehicle platforms.

We agree, however, that EDR data would be valuable in the case of events where an air bag was deployed and the trigger threshold was not met or exceeded. Including a reference to air bag deployment as a trigger by itself, while maintaining the delta–V trigger, is consistent with the agency's intent in the final rule. We are therefore modifying the definitions of ''event'' and ''time zero'' as follows:

Event means a crash or other physical occurrence that causes the trigger threshold to be met or exceeded, or an air bag to be deployed, whichever occurs first.

Time zero means whichever of the following occurs first:

(a) For systems with ''wake-up'' air bag control systems, the time at which the occupant restraint control algorithm is activated; or

(b) For continuously running algorithms,

(i) The first point in the interval where a longitudinal cumulative delta–V of over 0.8 km/h (0.5 mph) is reached within a 20 ms time period; or

(ii) For vehicles that record ''delta–V, lateral,'' the first point in the interval where a lateral cumulative delta–V of over 0.8 km/h (0.5 mph) is reached within a 5 ms time period; or

(c) An air bag deployment.

Further, we are granting the petitions to clarify the ''end of event'' definition to allow the EDR to determine if an actual end of event has occurred. To address

[7] Docket Nos. NHTSA–2006–25666–439 and –447.

[8] Docket No. NHTSA–2006–25666–442.

[9] Docket No. NHTSA–2006–25666–448.

[10] The meaning of ''locked'' is discussed below in section A3.

the AORC and Toyota requests, we are modifying the definition as follows:

End of event time means the moment at which the cumulative delta–V within a 20 ms time period becomes 0.8 km/h (0.5 mph) or less, or the moment at which the crash detection algorithm of the air bag control unit resets.

3. Reusability of EDRs

AORC petitioned NHTSA to define the term ''locked'' so that the EDR itself could not overwrite event data, but so that external means could be used to erase data after download. They argued that in some cases, the EDR may be reusable after a deployment event, and allowing data to be erased would facilitate reuse.

Agency response: We are denying this petition. We do not believe that reuse of the EDR is a sufficient reason to allow its erasure by external means. If we allowed the EDR to be erased by external means, it could encourage development of tools to erase EDR data potentially beneficial to our programs, and would make it difficult to ensure that this feature was not being misused. Although the final rule did not define the term ''locked,'' we consider it to mean to protect EDR data from changes or deletion. This would include by external means.

B. Data Format

''Recording'' versus ''Reporting'' data:

Several petitioners argued that the title of Table III should be changed from ''Recorded Data Format'' to ''Reported Data Format,'' essentially because differences in EDRs may cause them to record data differently, and requiring identical recording capabilities could be more onerous than the agency likely intended. AORC argued that it appears that post processing of data collected from an EDR is allowable, and that the title of Table III should be changed to ''Reported Data Format'' to clarify this point. Along those lines, AORC petitioned that the ''resolution'' column in Table III be changed to ''Reported Format,'' and that NHTSA clarify that the actual sensor resolution may differ from the reported format.

The Alliance stated that SAE J1698 and J1698–1 provide guidelines for reporting EDR data, not recording EDR data. In support, the Alliance cited the scope of SAE J1698, which states:

This recommended practice aims to establish a common output format of crash-related data recorded and stored within certain electronic components currently installed in many light-duty vehicles. This recommended practice pertains only to the post-download format of such data and is not intended to standardize the format of the data stored within any on-board storage unit, or to standardize the method of data recording, storage, or extraction.''

Therefore, the Alliance petitioned that § 563.8(a) be revised to read ''The data elements listed in Tables I and II, as applicable, must be reported in accordance with the range, accuracy, resolution, and filter class specified in Table III.'' It further requested that the title of Table III be changed to ''Reporting Data Element Format.'' Toyota supported the Alliance petition.

Agency response: We are granting these petitions. In the final rule, the agency expressed its intent to specify recording requirements identical to or less stringent than those found in SAE J1698. As the Alliance noted, that standard was intended for the purpose of ''reporting'' EDR data, not ''recording'' it. To remedy this oversight in the final rule, we are revising the title of Table III to ''Reported Data Element Format,'' and revising § 563.8(a) as follows:

(a) The data elements listed in Tables I and II, as applicable, must be reported in accordance with the range, accuracy, and resolution specified in Table III.

We are not changing the ''resolution'' column title as requested by AORC, because the revised Table III title should sufficiently address their concerns.

SAE J211–1 Filter Class

The AORC petitioned NHTSA to remove the SAE J211–1 Class 60 filter class from the final rule, because it applies to vehicle instrumentation in laboratory tests and may be inconsistent with some of the data collected by EDRs. The Alliance also petitioned to remove the SAE J211–1 filter class from Table III, because component suppliers typically incorporate their own filtering techniques into the acceleration data acquisition hardware, and an additional filtering requirement may cause data processing issues for EDRs.

Agency response: We are granting these petitions. NHTSA included the SAE J211–1 filter class in the final rule to ease comparison of data collected from EDRs with data collected during agency crash tests. Data filters are used to eliminate noise from sensor signals and extract the useful data. We believed that by specifying the same filter class used during agency crash tests, EDRs would provide information more readily comparable to the data collected by instruments used during our crash tests. It also allowed comparison amongst EDRs from different manufacturers. However, in ex parte meetings with AORC, the Alliance, AIAM, and Toyota,[11] the petitioners presented additional material indicating that current EDRs contain internal filtering capability. Additional filtering of the already-filtered data could remove useful signal content, and could result in attenuation or phase shifting of the data. Based on this information, we are removing the SAE J211–1 filter class requirement from § 563.8(a) and the corresponding column from Table III.

Requirements for Particular Data Elements

The Alliance petitioned NHTSA to revise the resolution requirement in Table III for acceleration data to ''the range of the sensor divided by the number of available states in one byte.'' In this manner, a 100 g sensor (± 50 g) would have a resolution of 0.39 g (100 g/255).[12] The Alliance argued that the accelerometers required in crash testing (capable of measuring at a 0.01 g resolution) are not of the type employed in EDRs. Such accelerometers would double the EDR memory requirements and increase sensor cost, with no apparent benefit.

The Alliance also petitioned NHTSA to revise the recording interval from 250 to 70 ms from time zero, and allow a range of sampling rates from 100 to 500 Hz, to prevent the need for upgraded accelerometers and requisite memory with no added benefit. It argued that some accelerometers sample at rates as low as 100 Hz, compared to the 500 Hz rate specified in Table II, and that many EDRs record acceleration data for only 50–70 ms from time zero, compared to the 250 ms requirement in the final rule.

Toyota also recommended that the agency change the time interval for delta–V data to ''0–250 ms or 0–End of Event Time plus 30 ms, whichever is shorter.'' Likewise, Toyota recommended changing the time interval for maximum delta–V to ''0–300 ms or 0–End of Event Time plus 30 ms, whichever is shorter.''

AIAM also addressed the issue of the time interval for maximum delta–V data. It argued that the time interval specified in Table III was not in agreement with the preamble, and petitioned that the agency specify in Table III that the maximum delta–V time interval was 0–250 ms.

AIAM also stated that the final rule did not provide a method for verifying the format of the data elements, and that it was therefore unclear how the agency

[11] *See* Docket No. NHTSA 2006–25666 for the records of these meetings.

[12] There are 255 states in one byte of memory. One byte is equal to 2^8 (256) bits. The number of states in each byte is equal to the number of bits minus 1 (256 − 1 = 255).

intended the accuracy criterion to be applied. AIAM requested that the agency provide a procedure for determining Table III data element accuracy, range, and resolution verification.

Nissan [13] supported the AIAM petition with regard to recorded data format, and also recommended that the agency revise the acceleration data element resolution from 0.01 g to 0.5 g.

Agency response: We are granting the petitions regarding the resolution capability required for accelerometers in the final rule, because we recognize that current technology accelerometers used in EDRs are not, in fact, able to meet the resolution requirement in Table III. As discussed above, this stems in part from the agency's substituting ''Recording'' for ''Reporting'' format in our attempts to align the EDR regulation with the standard industry practice of SAE J1698. The 0.01 g acceleration data resolution specified in Table III would require manufacturers to add additional memory to the EDR and upgrade the accelerometers to laboratory-grade reference accelerometers.[14] Data submitted by the Alliance,[15] AORC,[16] and Toyota[17] indicate that there would be no significant loss in acceleration data quality if accelerometer accuracy and resolution were revised to 0.5 g. Since the agency intended for the EDR rule to have a low cost impact, and since the data quality will not be significantly reduced, we are changing the resolution for acceleration data elements in Table III to 0.5 g.

For similar reasons, we are granting the petitions to amend the minimum output for the accelerometer ranges. If acceleration is recorded, it must be included in the EDR output and reported in the minimum format specified in Table III. In meetings with the agency, the Alliance and Toyota argued that the sampling rate was too high for many accelerometers, and would raise EDR manufacturing costs by requiring up to five times the memory storage capacity currently common for EDRs. NHTSA intended to maintain a low cost impact as part of the final rule, but also intended to standardize EDR output data. Consequently, we are amending the minimum data sampling requirements for EDR accelerometer data from 500 Hz to 100 Hz, and are also amending the accelerometer data minimum formats in Table III to reflect the typical acceleration ranges recorded by the accelerometer components.

Regarding the issue of maximum delta–V interval times, we are granting the petition to change the data format in Table III to reflect the new time interval changes. NHTSA is adopting Toyota's suggestion of setting the time interval for the delta–V elements as ''0–250 ms or 0–End of Event Time plus 30 ms, whichever is shorter,'' and for maximum delta–V, ''0–300 ms or 0–End of Event Time plus 30 ms, whichever is shorter.'' This will also partially address the AIAM concern about the maximum delta–V interval times in Table III. We do not agree that the maximum delta–V interval time need match that of the other delta–V elements, because in some cases, the resultant maximum delta–V may be achieved after the initial 250 ms time interval. However, the revisions allow a shorter time interval for maximum delta–V if the EDR decides that the event has ended and seeks to reset the event time clock.

We are denying AIAM's request for a verification method for Table III data elements. The agency will verify the data based on the above revisions to Table III and standard laboratory procedures. Standard laboratory procedures would include instrumentation that is traceable to a standard reference and calibrated to a degree of accuracy that is better than the device being tested to verify that the test device is measuring properly. Therefore, when the EDR data is downloaded, the data from the reference accelerometer would verify that the EDR measured the crash pulse accurately.

C. Sensor Accuracy and Range

1. Sensor Accuracy

AORC petitioned the agency to widen the tolerance for recorded delta–V and the underlying accelerometers from ±5% to ±8%. It argued that standard accuracy for accelerometers currently utilized for air bag control units ranges from ±5% to ±10%. They further argued that factors such as misalignment and digitization errors contribute to sensor inaccuracy and necessitate the wider sensor tolerance. AIAM also petitioned for a wider tolerance of ±10% for the accelerometer and delta–V data elements.

The Alliance and Toyota petitioned the agency to remove the acceleration data elements entirely from the final rule, arguing that such data can be derived from the delta–V and event time data elements. If the agency decided to retain the acceleration data elements, however, the Alliance and Toyota requested that the tolerance for acceleration data and delta–V data be increased to ±10%. Delphi petitioned the agency to eliminate the range and accuracy requirements on all inertially-sensed data elements (e.g., acceleration and angular rate), recommending that the agency instead add data elements that indicate the actual range and accuracy characteristics of the inertial parameters included in the record.

The Alliance also petitioned the agency to clarify that accelerometer accuracy is calibrated in comparison with a laboratory grade sensor, and that decreased accelerometer accuracy is allowed in the event of sensor saturation, arguing that accelerometers can lose signal accuracy in certain cases when they experience forces beyond their capability to measure. AORC petitioned that NHTSA specify the temperature conditions when measuring accelerometer accuracy, and that the tolerances apply only within the range of the sensors used in the application and data derived from those signals. Like the Alliance, AORC stated that signals that exceed the range of the sensor may result in clipping of the data, which can affect the overall accuracy of the delta–V calculation.

Agency response: We are granting the petitions to widen the tolerance on accelerometer and delta–V accuracy, but denying the petitions to remove acceleration data elements from the final rule. In the final rule, the agency noted that acceleration is a common data element collected in engineering studies and crash tests to determine crash severity and the shape of the crash pulse in frontal and rear crashes. Therefore, we believe it is appropriate to standardize acceleration data captured by EDRs. However, error source data submitted after the final rule by the Alliance, AORC, and Toyota [18] indicate that current technology EDR accelerometers have lower accuracies than NHTSA previously believed, near ±10%. If we maintain the requirement in the final rule, costs would be imposed beyond what we had analyzed and intended. For these reasons, we are revising the tolerance for accelerometer accuracy to ±10% in order to accommodate current technology EDR accelerometers. Similarly, because delta–V data is derived from acceleration data, it cannot be more accurate than the acceleration measurements, so we are revising the delta–V tolerance to ±10% as well.

[13] Docket No. NHTSA–2006–25666–448.

[14] The AORC reported that current air bag control units use 8–10 bit acceleration data resolution, whereas laboratory-grade reference accelerometers use 14–16 bit resolution to achieve a 0.01 g resolution. See Docket No. NHTSA–2006–25666–436.

[15] See Docket No. NHTSA–2006–25666–441.

[16] See Docket No. NHTSA–2006–25666–436.

[17] See Docket No. NHTSA–2006–25666–447.

[18] *See supra* notes 17–19.

We are denying the petitions to modify the final rule to allow additional EDR inaccuracy due to sensor saturation or data clipping. NHTSA recognizes that in certain rare extreme crash scenarios, the crash pulse may exceed the sensor detection capacity and result in data saturation, even in sensors that have been optimized for their given purpose. In these situations, the crash pulse may cause additional reported data inaccuracy or clipping; however, by doubling the tolerance on the accelerometer data, we believe this has been sufficiently addressed.

We also believe it is unnecessary to specify how accelerometers should be calibrated. To a certain extent, accelerometers will be calibrated when NHTSA crash tests the vehicle. The reference accelerometer used during the test will indicate whether the accelerations reported by the EDR are within ±10% of the reference accelerometer. Additionally, we believe that the manufacturers' interest in guaranteeing that the delta–V calculation made by the vehicle is accurate will ensure that accelerometers are properly calibrated in the first place. If the acceleration is off by too much, the delta–V calculated may be off and the air bag may not fire at the appropriate time in the crash test. However, because each manufacturer may have a different strategy for placement of sensors and for normalization of the data from those sensors to make a deployment decision, there may be many different ways to achieve that necessary accuracy, and we have no interest in requiring a single method simply for purposes of this rulemaking.

2. Sensor Range

AORC petitioned NHTSA to clarify that the ±50 g accelerometer range is a minimum range for post-download data output format only, and to add a footnote to the ''Range'' column in Table III denoting that actual sensor range may differ from table values for crash performance reasons. It argued that the ±50 g range is too wide for lateral and vertical sensors and too narrow for longitudinal sensors, and requested that NHTSA allow higher range longitudinal accelerometers and narrower range lateral and vertical accelerometers provided that the output format is ±50 g at a minimum. The Alliance also argued that lateral accelerometers used for rollover mitigation and electronic stability control systems do not have the same range as frontal crash accelerometers, and are more likely to be 2 to 5 g full-scale than 50 g.

AIAM petitioned NHTSA to allow delta–V calculation errors due to accelerometer data truncation to the ±50 g range, and to specify that the acceleration data element ranges in Table III are minimum ranges. AIAM argued that in certain severe crashes, the longitudinal acceleration component may be higher than the ±50 g range specified in Table III. Thus, in those cases, the acceleration value recorded by the EDR would be truncated at 50 g and the resultant delta–V calculation might not meet the accuracy specified in section 563.

AIAM also stated that current EDR designs could include accelerometers with ranges as low as ±30 g to measure some longitudinal and lateral acceleration components, and as low as ±1 g to measure normal (vertical) acceleration components. AIAM petitioned NHTSA to modify the acceleration ranges specified in the final rule to accommodate current EDR designs, and to allow alternative ranges for lateral and vertical accelerometers. Nissan supported the AIAM petition.

Agency response: As discussed in Section III.B above, we are modifying the specified accelerometer ranges to be ''reported'' and not ''recorded.'' We believe this will resolve the concerns expressed by the petitioners. Additionally, based on the comments and agency research, we recognize that the ranges specified for acceleration data elements may not be appropriate for sensors optimized for specific roles. Whereas longitudinal accelerometers may well measure data over the full range of ±50 g, lateral and normal accelerometers might be optimized to measure data over only a fraction of that range, because vehicles simply do not typically experience the kinds of lateral and normal acceleration as they do longitudinal acceleration. To clarify the issue, we are granting the petition to specify that the ranges are reported minimums such that alternative sensing ranges are permitted, and we are specifying minimum reporting ranges of ±5 g for the lateral and normal accelerometer data elements consistent with current technology practices.

D. Data Survivability and Retrievability

The Alliance argued that for the purpose of determining compliance, NHTSA should clarify in the regulatory text that the EDR is restored to and stabilized at the conditions during the FMVSS No. 208 crash test procedure. Thus, it petitioned the agency to specify environmental conditions for the time period prior to data download for compliance purposes; namely, that the vehicles be kept dry and at a temperature during download that has been maintained at 66—78 °F prior to any read-out being used to assess compliance.

AIAM also petitioned that NHTSA specify that vehicles must be stored and protected from extreme environmental conditions (temperature or precipitation) prior to data download during EDR compliance assessment. AIAM argued that although a 10-day data storage requirement is reasonable, a crash test vehicle left unprotected from severe elements for 10 days could experience data loss. Nissan supported the AIAM petition.

Public Citizen, on the other hand, reiterated the position it stated in its comments to the NPRM that the agency should specify more extreme survivability requirements for EDR data. It argued that fatal crashes include ones resulting in fires and fluid immersion, and that EDR data from those crashes are essential to NHTSA researchers in fully reconstructing crashes and developing more comprehensive safety standards. Public Citizen also petitioned that NHTSA require EDRs to meet survivability standards for crash events at speeds higher than 50 mph. It argued that the final rule as written neglects higher speed, rear impact, and rollover crash tests.

Agency response: We are denying the petitions to shelter crashed vehicles to protect them from environmental conditions for the 10-day survivability period, or to stabilize them at room temperature for 24 hours prior to data download for compliance purposes. NHTSA's experience does not indicate that this should be a problem for compliance. We recognize that during the compliance tests, the vehicle glazing components may become damaged and could expose EDR modules to precipitation. However, this routinely happens to vehicles in the real world. Crashed vehicles stored in a tow yard are typically only minimally protected from environmental conditions, yet NHTSA has been successful in downloading data from nearly 5,000 vehicles to date. We believe that the vast majority of EDRs available today can maintain crash data for 10 days after the event despite adverse weather conditions, and are therefore denying these requests.

Additionally, we are denying the petitions to increase the survivability requirements to include data retrievability after high-speed (above 50 mph) and extreme fire and fluid immersion crashes. As we stated regarding fire and fluid immersion crashes in the final rule,

In the NPRM,[19] we stated that EDR data from such crashes might be useful, but we do not have sufficient information to propose survivability requirements that would address such crashes. We also stated that countermeasures that would ensure the survivability of EDR data in fires might be costly. We have not engaged in research to promulgate survivability requirements for EDR data in these extreme cases. Moreover, we reiterate that the most important benefits of EDR data comes from enabling ACN and composite analysis, and we believe that this final rule will allow researchers to gather sufficient EDR data of statistical significance. We believe that we can meet the objectives of this rulemaking without requiring EDR survivability in extreme crashes.[20]

Public Citizen provided no additional data in its petition to contradict our continued belief that the rule as written will allow researchers to gather enough EDR data of statistical significance. As explained, we believe that requiring such extreme survivability is unnecessary given the objectives of this rulemaking.

As for high speed crashes, the agency has specified that compliance tests will be conducted in conjunction with FMVSS Nos. 208 and 214, which ensures that reliable information about severe crashes will be preserved while minimizing the rule's potential cost impact. We note that the FMVSS No. 208 crash tests are now performed at speeds of up to 56 km/h (35 mph), which represent the cumulative delta–V for 99% of frontal crashes.[21]

We disagree that the final rule neglects rear impact or rollover crashes. The final rule standardizes lateral acceleration, longitudinal acceleration, and vehicle roll angle data elements recorded by EDRs. We note that many manufacturers are already utilizing rollover sensors as part of their side curtain air bag systems. However, not all manufacturers have rollover systems installed in their fleets, or capture rollover data. Therefore, NHTSA does not believe that it is necessary at this time to require EDRs to record, for example, lateral acceleration or vehicle roll angle, at the risk of increasing the costs associated with installing EDRs in vehicles.

As for rear impact crashes, the final rule's definition of trigger threshold uses an absolute value, rather than specifying that deceleration or acceleration should be a trigger.[22] Through vehicle symmetry, longitudinal accelerometers will capture rear impact data the same as frontal impact data. Therefore, we believe that rear impact crashes will be covered just as well as frontal impact crashes.

E. Required Data Elements

1. Peripheral Sensors

AORC petitioned to exclude peripheral sensors from the scope of the final rule. It argued that state-of-the-art EDRs utilize peripheral sensors which may be positioned in the crushable zone of a vehicle and may not survive the entire crash. AORC further argued that it believes the agency intended EDRs to capture ''rigid body'' data for event reconstruction, and that sensors located in the crushable zones of vehicles may not meet the requirements of the final rule.

The Alliance also petitioned to exclude satellite sensors from the scope of the final rule. It stated that satellite sensors may be optimized for functions unrelated to EDRs and crash investigations, and have ranges and tolerances that are radically different than those specified in the final rule. The Alliance argued that accelerometers located in the air bag control modules, closer to the vehicle center of gravity, provide a more accurate indication of actual rigid-body acceleration.

Delphi expressed concern that some data elements in Table I[23] may not be available to the EDR in vehicles with functionally independent, non-interconnected subsystems in severe crash scenarios. Delphi suggested that manufacturers may not include EDRs in vehicles if they are required to record these data elements. Therefore, Delphi petitioned NHTSA to consider an exception to certain Table I elements if those data sets are not available to the EDR.

Agency response: We are granting the petitions with regard to satellite or peripheral sensors, although we believe it is unnecessary to change the regulatory text to make this clarification. In the final rule, the agency expressed its intent for the EDR to capture the rigid body motion of vehicles in crashes. As the petitioners noted, the rigid body motion is best captured by collecting data centrally located in the occupant compartment of the vehicle. Data from satellite or peripheral sensors are not used for these purposes, but rather help the air bag control module and other occupant protection systems to perform optimally. We recognize that sensors located in vehicles' crushable zones may not meet the survivability standards set forth in the final rule, and therefore exclude them from those standards.

However, we are denying Delphi's petition to exempt data elements from Table I if those data sets are not available to the EDR. While NHTSA recognizes that it may save EDR development costs to utilize sensor systems currently in place, we believe that the EDR should be capable of recording data from these systems for the interval times specified in the final rule. The sensor systems identified by Delphi as examples of ''functionally independent, non-interconnected subsystems'' are all data elements of primary interest to NHTSA in determining the pre-crash conditions, and therefore would likely still be available to the EDR. Further, the agency believes that the crash scenarios in which these systems may become disconnected, and thus no longer available to the EDR, would involve extremely severe or rare conditions that are not of interest to the agency at this time for practical reasons. The compliance test procedures specified in the final rule do not recreate such extreme conditions, so data from these subsystems would still be available for compliance purposes.

2. Steering Input and Wheel Angle

AORC stated that the ''steering input'' data element in Table II appears to be equivalent to the ''steering wheel angle'' data element in Table III. AORC additionally petitioned that NHTSA specify that Table II steering input and wheel angle tolerance values are minimums, and that there is no need to truncate the data to fit the Table III format. AORC also requested that the Table III accuracy for steering wheel angle be changed to a percent of the full scale rather than a fixed angle tolerance.

Agency response: We are granting these requests as technical amendments. When the final rule was drafted, NHTSA believed that the steering angle during an event would rarely exceed ±250 degrees from the normal position. AORC explained in subsequent meetings that state-of-the-art EDRs in fact report steering wheel accuracy in terms of a percent of the full scale, and that there is therefore no need to limit the steering input data element to the ±250 degree range. Changing the format of how the steering input data is reported is simply a technical change, and will not substantively change the type of data collected for the agency's research purposes. This response to petitions changes the steering wheel angle accuracy in Table III from ±5 degrees to ±5 percent, and changes the resolution from 5 degrees to 1 percent.

[19] 69 FR 32943 (Jun. 14, 2004).

[20] 71 FR 51024 (Aug. 28, 2006).

[21] *See* Docket No. NHTSA–2006–26555–1, at 60.

[22] A vehicle will decelerate rapidly in a frontal crash, and accelerate rapidly in a rear-impact crash.

[23] *E.g.,* vehicle speed indicated, % engine throttle, and service brake indicator.

The steering input data element of Table II has also been specified under minimum conditions. Additionally, we agree that the terms steering input and steering wheel angle refer to the same thing, and are changing ''steering wheel angle'' in Table III to ''steering input'' for purposes of consistency.

3. Vehicle Roll Angle Accuracy

AORC argued that the typical accuracy for state-of-the-art roll angle sensors is about 7%, and petitioned that the agency measure that accuracy as a percent of the full sensor range rather than as a fixed roll angle. AORC further requested that the EDR should only be required to store the roll angle data element up to the deployment of the air bag, and that the accuracy requirement only apply within the range of the sensors used in the application and at room temperature.

Agency response: We are granting the petition with regard to roll angle accuracy being measured as a percent of the full sensor range, but denying the request that the EDR should only be required to store roll angle data up to the deployment of the air bag and that the accuracy need only apply at room temperature. As discussed above, we are revising the acceleration accuracies in Table III to ±10%. We believe that the inertial sensors utilized in roll angle sensor systems will exhibit similar accuracy traits, and should be measured as a percent of the full range of the sensor.

We believe there is no need to limit collection of roll angle sensor data to the time interval prior to air bag deployment. As footnoted in Table II, the recording interval is a suggested period only. This is because the agency recognized the potential for misalignment of sensors and consequent loss of accuracy due to vehicle damage during a rollover event. NHTSA would not consider it non-compliant if an EDR was unable to collect roll angle sensor data for the full recording interval; therefore, an additional limit to the recording interval is not necessary.

4. Data Element Definitions

(a) Definition of Time to Maximum Delta–V Resultant

AORC stated that it believes that the ''resultant'' maximum delta–V means the magnitude of the vector-added longitudinal and lateral maximum delta–V, and that this value can be processed during the data downloading procedure. AORC petitioned NHTSA to define ''Time, Max Delta–V Resultant'' in § 563.5.

Agency response: We are granting the petition to define ''Time, Maximum Delta–V Resultant,'' and are also defining ''Maximum Delta–V Resultant'' for clarification. These changes clarify the regulatory text and are technical in nature, having no effect on the substantive requirements of the rule. The new definitions will be added to § 563.5 as follows:

Maximum delta–V, resultant means the time-correlated maximum value of the cumulative change in velocity, as recorded by the EDR or processed during data download, along the vector-added longitudinal and lateral axes.

Time, maximum delta–V resultant means the time from crash time zero to the point where the maximum delta–V resultant occurs, as recorded by the EDR or processed during data download.

(b) Clarification of Engine RPM Definitions

The Alliance petitioned the agency to revise the Engine RPM definition to include hybrid vehicles with one or more drive systems. It recommended that the measurement point be moved to the point of entry to the transmission gearbox.

Agency response: We are granting this petition for clarity's sake. For hybrid and other vehicles not entirely powered by internal combustion engines, when the vehicle is running on a power system other than the internal combustion engine, the engine RPM data element would not be utilized. However, as the Alliance noted, the operating speed of the engine or motor of a hybrid vehicle could be measured from the transmission. This clarification is technical in nature and will have no effect on the substantive requirements of the final rule. NHTSA is redefining engine RPM as follows:

Engine RPM means, for vehicles powered by internal combustion engines, the number of revolutions per minute of the main crankshaft of the vehicle's engine, and for vehicles not entirely powered by internal combustion engines, the number of revolutions per minute of the motor shaft at the point at which it enters the vehicle transmission gearbox.

Additionally, since some electric and fuel cell vehicles may not have transmissions at all, for these vehicles, we believe it would be appropriate for the EDR to record output of the vehicle power plant. We do not plan to address this in the regulatory text until a significant number of these vehicles are produced.

(c) Clarification of Readiness Indicator Lamp

The Alliance petitioned NHTSA to either delete the Table I data element ''frontal air bag warning lamp'' or change that data element to ''Readiness Indicator Lamp.'' It suggested that the readiness indicator lamp as described in FMVSS No. 208 (S4.5.2) is the data element that NHTSA intended for EDRs to record. The Alliance argued that the name should be changed for accuracy's sake, since the readiness indicator may illuminate to indicate a malfunction in many parts of the restraint system besides the frontal air bag, including the seat belt pretensioners, the passenger seat weight sensors, the side impact sensors, the curtain air bag modules, and so forth.

AIAM also petitioned to clarify that the ''readiness indicator'' referred to the indicator specified in S4.5.2 of FMVSS No. 208. It recommended that the EDR record the status of the safety system as a whole, and not simply whether or not the readiness indicator lamp is illuminated. AIAM further petitioned that NHTSA confirm that the EDR may record additional safety system readiness information, such as the state of side air bag systems. Nissan supported the AIAM petition.

Agency response: We are granting the petitions on this issue in part. In its meeting with the agency, the Alliance reported that the readiness indicator may also illuminate to indicate a malfunction in the restraint system other than a frontal air bag. For example, the indicator may illuminate if a malfunction is detected in a side curtain air bag, or in a deployable seat belt pretensioner. The agency did not intend to require by the final rule that readiness indicator lamps be used only for the frontal air bag; we agree that it may also indicate malfunctions in other parts of the restraint system.[24] We are adding a clarifying footnote to Table I corresponding to ''Frontal air bag warning lamp, on/off'' as follows:

[2] The frontal air bag warning lamp is the readiness indicator specified in S4.5.2 of FMVSS No. 208.

5. Whether the Suppression Switch ''Auto'' Data Element in Table II Should Be Retained

The Alliance petitioned NHTSA to remove the frontal air bag suppression switch ''auto'' data element from Table II. It argued that the air bag system can be deactivated through numerous methods, and is either on or off at the time of the event (*i.e.,* it would not be ''auto''). The Alliance stated that an EDR that records ''auto'' would not seem to answer an end-user inquiry as to why an air bag did or did not deploy.

[24] We have previously confirmed this by interpretation. See Letter to Michael Love, Porsche Cars North America, Inc., Jul. 30, 1996. *Available at http://isearch.nhtsa.gov/files/PORSCH3.wpd.html* (last accessed Oct. 5, 2007).

Agency response: We are denying this petition. Recording the position of the air bag suppression switch, even if it is in the ''auto'' position, may help the agency in determining whether advanced air bag systems with automatic suppression systems are performing properly. Given that this falls within the scope of the rulemaking's intent, we are not granting this petition. For clarity, we are also making a technical correction to Table III to reflect that the ''auto'' option in the reported data element format be for the frontal air bag suppression switch status.

6. Whether the ''Vehicle Speed Indicated'' Data Element in Table III Is Feasible

AIAM petitioned NHTSA to revise the vehicle speed data element accuracy to ±10 km/h, arguing that the listed accuracy requirement in Table III of the final rule is not feasible. However, AIAM suggested that if the agency's intent was to specify a ±1 km/h resolution for data reporting purposes only, the data element would not be problematic. Nissan supported the AIAM petition.

Agency response: We are denying this petition. While variations in tire and rim sizes may introduce additional inaccuracy in the vehicle speed indicated, we do not believe that the indicated speed will have an inaccuracy as high as ±10 km/h (approximately ±6 mph) outside of wheel slippage due to road surface conditions. However, we agree with the petitioner that the agency's intent was to specify a ±1 km/h resolution for data reporting purposes only. Since revisions are already being made to the title of Table III and to § 563.8(a) to specify that the data element formats are reporting, not recording formats, we are not changing the ''vehicle speed indicated'' data element.

7. Whether Additional Data Elements Should Be Included

Public Citizen noted that the number of required data elements in the final rule was reduced from the number in the NPRM, and reiterated its position stated in its comments to the NPRM that NHTSA should include more required data elements for EDRs. Specifically, Public Citizen requested that NHTSA reconsider data elements listed by the NHTSA-sponsored EDR working group and an IEEE EDR case report. It also cited VIN, crash location, and a date/time stamp data element as elements missing from the agency's final rule.

Agency response: We are denying this petition. We note that the agency discussed at length in the final rule the reasons for its inclusion/exclusion of various data elements, including the ones cited by Public Citizen. See 71 FR at 51011–51016. We continue to believe that the additional elements cited by Public Citizen are not needed for the agency's basic goals for this rulemaking, including crash reconstruction purposes.

We note that the vehicle VIN does not need to be a required data element, since that information is already required to download data from the EDR.[25] The crash location, date and time need not be required elements, since they are included in accident investigation reports. Also, if crash location was required, installation of global positioning sensors would be needed, drastically increasing the costs of EDRs contrary to the agency's intent in this rulemaking. As for our denial of Public Citizen's petition to include all of the data elements listed in the IEEE report, Public Citizen provided no new information or arguments on this subject in its petition for reconsideration than it provided in its comments to the NPRM. In the final rule, we explained that the IEEE data element list was more like a ''data dictionary'' than a list of actually recommended data elements to be recorded. Requiring all of the IEEE-listed data elements would result in redundancy and the unnecessary standardization of many data elements that are unrelated to the purposes of this rulemaking.

F. Lead Time

The Alliance petitioned NHTSA to change the compliance date set of the final rule. It argued that the final rule will likely require manufacturers to redesign EDRs and electrical architectures in virtually all vehicles covered by the regulation, and that it is impractical to implement these product changes across the entire fleet of vehicles by the September 1, 2010 compliance date. The Alliance instead recommended that the agency either delay the effective date or implement a phase-in schedule. It recommended a phase-in schedule of 25% for MY 2011, 50% for MY 2012, 75% for MY 2013, and 100% compliance thereafter.

AIAM also argued that significant redesigns may be required for manufacturers to comply with the final rule, and requested a later compliance date. It recommended a phase-in schedule of 50% for MY 2011, 80% for MY 2012, and 100% for MY 2013, with advance credits for early adoption.

Agency response: At the time of the final rule, we believed that the September 1, 2010 effective date would have little impact on the manufacturers. We note that much of the EDR data available to the agency has been from GM vehicles, and that there are few differences between the data sets collected from those vehicles and the minimum requirements of the final rule.

However, in connection with the petitions for reconsideration, manufacturers have submitted information that even with the reduced number of required data elements included in the final rule, industry will still need to make architecture changes that will extend the lead time beyond September 1, 2010 for new EDRs that comply with the final rule.[26] Because of supply chain constraints, and the three to four year development times needed to install EDRs in a vehicle model production run,[27] the EDRs for vehicle model years 2007 through 2010 have already been finalized and cannot be changed without incurring major redevelopment costs. Specifically, significant changes will be needed to EDR data bus architecture for the industry to be able to comply with the final rule. Some manufacturers reported that they may need to redesign the air bag control module, while some reported that new EDR hardware architectures needed to be developed. We believe that these changes, if necessary, would require manufacturers to recertify their air bag systems, which would require them to invest in development and testing outside of the normal vehicle model run.

We agree that a delay in the rule is needed to prevent manufacturers from incurring significant redesign costs for EDRs. We do not want the final rule to inhibit manufacturers from continuing to include EDRs (in whatever form) in their vehicles between now and the effective date of the final rule. Therefore, we are granting the petitions to delay the effective date until September 1, 2012. We are not granting the petitions with respect to the requests for a phase-in, because we believe that a fixed date of 2012 will be sufficient for manufacturers' needs. For the same reason, and because manufacturers indicated that 2012 would be sufficient,

[25] Similar EDR architecture may be used for different models in a manufacturer's line of vehicles. The VIN must be inputted so that the EDR software can know what vehicle model it is installed in, so that it can interpret the data it has recorded in light of the specific parameters of the vehicle model.

[26] Specifically, AORC, the Alliance, Toyota, and GM.

[27] During the May 15, 2007 SAE Government/Industry Workshop, Ford representatives indicated that development times for EDRs precede vehicle model introductions by at least 3 years.

we are not granting the petition for an effective date of September 1, 2013.

NHTSA believes that the additional two years will both allow the manufacturers time to implement the necessary EDR and air bag architecture changes during the normal model development cycles, and the agency to continue to collect data from vehicles with EDRs that do not meet the full requirements of the final rule, specifically, from manufacturers who are farther from meeting the rule than GM. Moreover, by delaying the effective date of the final rule, the agency will have a better chance of collecting more complete data from EDRs installed in vehicles, since manufacturers can implement some minor changes to the EDR functions in preparation for compliance with the final rule.

G. Whether NHTSA Should Mandate EDRs

Public Citizen reiterated its position from its comments to the NPRM and petitioned NHTSA to mandate EDR installation for all vehicles instead of establishing requirements for voluntarily installed EDRs. It argued that the safety benefits of EDRs far outweigh the financial burden manufacturers would incur with a fleet-wide mandate, and that manufacturers will seek relief from the requirements by not equipping their vehicles with EDRs. Public Citizen further stated that gaps in accident reconstruction knowledge would compromise the agency's ability to draw conclusions from EDR data, and that a mandate for EDRs on all vehicles would avoid those gaps.

Agency Response: NHTSA carefully considered Public Citizen's petition that we mandate installation of EDRs. Public Citizen provided no new information in their petition for reconsideration of the final rule that had not already been provided in their comments to the NPRM. We did not mandate installation of EDRs in new motor vehicles in the final rule, and discussed extensively our reasoning for our decision not to mandate the installation of EDRs in motor vehicles at this time. See 71 FR 51010–11 (Aug. 28, 2006) for a complete discussion of this issue. In summary, although we chose not to mandate EDRs, we recognize the benefits of EDRs in vehicles, and the final rule intends to capture those benefits by helping the agency gather EDR information and building the foundation for ACN. As explained in the final rule, given the current level of voluntary EDR installation, and the expected increases in the extent of voluntary installation, we continue to believe that EDRs will yield data of statistical significance even without being mandated.

Further, manufacturers benefit from having EDRs in their vehicles as well—they collect information on how their vehicles and equipment are performing just as NHTSA does. We believe that this benefit to manufacturers will help keep EDRs in vehicles, as evidenced by the fact that the marketplace appears to be adopting more, not fewer, EDRs. Therefore, we are denying Public Citizen's petition to mandate installation of EDRs in all new vehicles.

H. Public Privacy and Consumer Notification of EDRs

1. Whether NHTSA Should Require a Mechanical Lockout on EDRs

Mr. Thomas Kowalick petitioned NHTSA to require a mechanical lockout on the on-board diagnostic (OBD2) port [28] for the sole use/control of the owner or operator of the vehicle equipped with an EDR. Mr. Kowalick argued that it is possible to protect consumer privacy rights by use of a mechanical lockout system on this port, which is used to download EDR data. In a March 1, 2007 meeting with NHTSA, Mr. Kowalick expressed an additional concern that aftermarket devices are being developed to erase or tamper with EDR data.[29] He noted that the preamble to the final rule stated that if tampering became apparent, NHTSA would reconsider its position on this issue.

Agency response: We are denying this petition. Mr. Kowalick provided information that devices may exist to erase or tamper with EDR data, but he did not provide information that they were actually being used. There are several other ways that EDR tampering will be prevented. First, the EDR download port is installed inside the vehicle, on which the door locks act as a first line of defense to prevent access to the data port. Second, if the vehicle glazing is missing, either due to an accident or forceful entry (assuming a person wants to tamper with someone else's EDR data), the vehicle key is needed to power the vehicle to access the EDR data through the diagnostic port. And third, the final rule requires that event data from crashes in which an air bag has been deployed must be locked and cannot be overwritten. As stated in the final rule, the agency may revisit the issue if EDR tampering indeed becomes a problem.

2. Whether NHTSA Should Require EDR Download Tools To Be Standardized at This Time

Public Citizen petitioned NHTSA to require manufacturers to produce a standardized tool for downloading of EDR data by first responders. It argued that requiring a standardized download tool, rather than simply making a tool available within 90 days of the first sale of vehicles equipped with EDRs, will help reduce costs for emergency personnel and law enforcement officials and prevent manufacturers from providing tools that only download the bare minimum of EDR data. It further argued that without a standardized download tool, manufacturers will be able to maintain sole ownership of the only tools that gain access to all of an EDR's recorded data and ''cover up'' data on defect trends by preventing NHTSA, first responders, crash investigators, and other safety researchers from gaining access to valuable safety data.

Agency response: We are denying this petition. NHTSA has carefully considered the petitioner's comments, and believes that there is not a need to require a single standardized tool at this time. As we stated in the final rule, we expect that tools would be available for several years after the vehicle has been sold, and that newer versions of the download tools would be ''backward-compatible.'' We note that this trend has held true, but believe that the download tools required to read EDRs will become more complex for a period of time as manufacturers increasingly offer EDRs in their vehicle fleets, and develop existing EDRs to meet this rule.

We are continuing to monitor the progress of voluntarily installed EDRs and note that the manufacturers are already working toward a standardized set of downloading tools. We believe that once this standard becomes effective, the downloading process for EDRs will become less complex, and the tools will become easier to use and less expensive. Thus far EDR downloads have provided the information necessary for the agency to accomplish our research and enforcement objectives without the requirement of a standardized download tool. However, if this trend does not continue and download tools become so expensive that the collection of EDR data by NHTSA, first responders, crash investigators, and other safety researchers is hampered by the cost of the tools, the agency will consider taking appropriate action to address the

[28] *See* 61 FR 40940. The OBD2 port standard specifies the type of diagnostic connector and its output pin locations used for monitoring vehicle parameters measured by the on-board computer(s) such as emissions controls. It is typically located on the driver's side of the passenger compartment near the center console.

[29] Docket No. NHTSA–2006–25666–457.

problem. Since there is no evidence that the absence of a standardized download tool is hampering the usefulness of current EDRs, we are denying the petitioner's request.

3. Whether NHTSA Should Require Additional Consumer Notification

Public Citizen petitioned NHTSA to require vehicles equipped with EDRs to have window stickers or labels at the point of sale. It argued that the final rule's requirement for an owner's manual statement regarding the presence and functioning of the EDR is insufficient, because many people do not read the owner's manual before purchasing the vehicle. Additionally, Public Citizen petitioned NHTSA to require consumers to be handed a one-page document with a message similar to the statement in the owner's manual before purchasing the vehicle that notifies them of the presence of the EDR and describes its purpose and capabilities.

Agency response: We are denying these requests. The purpose of the specified statement in the owner's manual is to make the operator aware of the presence, function, and capabilities of the EDR. We believe that a statement in the owner's manual is sufficient for that purpose. The owner's manual is used to provide operators with a variety of types of important information concerning the vehicle, and we believe that there is nothing about the nature of EDRs to necessitate such information to be provided in other locations. We also note that putting this information on a window sticker would tend to dilute the effect of the other information that is already there, such as NHTSA's vehicle safety ratings.

4. Whether EDR Data Should Be Included in the FARS System

Public Citizen asked in its petition that NHTSA include EDR data in the Fatality Analysis Reporting System (FARS), and ensure that a system is in place for all first responders to download and forward data to NHTSA for analysis and inclusion in research databases. It stated that data analysis and presentation are critical to reaping the maximum benefit from EDR data. Public Citizen also recommended that NHTSA should additionally create a new database solely for EDR data to help corroborate conclusions drawn from other databases, and a system in partnership with law enforcement officials to ensure that all available EDR data is retrieved following a crash and sent to the agency for analysis.

Agency response: We appreciate Public Citizen's suggestions but note that the specific ways in which NHTSA may utilize EDR data in its programs is not within the scope of this rulemaking. The current system that NHTSA has been utilizing to integrate EDR data into research and analysis efforts has proven to be most adequate thus far. As the agency maintains and further develops its various safety programs, it will continue to consider ways in which EDR data may be able to be used to improve them.

I. Other Technical Revisions

On April 6, 2007, the agency published a final rule establishing FMVSS No. 126, ''Electronic stability control systems,'' which set performance and equipment requirements for electronic stability control (ESC) systems. As a technical correction, we are amending the definition of ''stability control'' in § 563.5 to read ''means any device that complies with FMVSS No. 126, ''Electronic stability control systems.''

J. Summary of Other Letters to the Docket

The American Automobile Association (AAA) stated that although some states are requiring manufacturers to notify consumers in the vehicle's owner's manual of the presence and functioning of the EDR, under the final rule it may take as long as four years for the notice requirements to transition to the remaining states. It urged the agency to work with manufacturers to include the owner's manual notice as part of the routine schedule of updating and revising the owner's manual.

In response, we note that we have reviewed many owners' manuals as part of this rulemaking. We have found that many have been updated to reflect the fact that EDRs are included on vehicles.

NHTSA also received and reviewed submissions from more than 400 private citizens expressing various concerns, including a belief in some cases that the agency was mandating EDRs and that consumer privacy would not be protected. However, the letters did not generally address the discussions provided by the agency in the final rule concerning privacy and other relevant issues. Moreover, the final rule does not mandate the installation of EDRs but instead standardizes the format of data collected from EDRs voluntarily installed in vehicles.

IV. Rulemaking Analyses and Notices

This rule makes several technical changes to the regulatory text of 49 CFR Part 563, and does not increase the regulatory burden of manufacturers. The agency has discussed the relevant requirements of the Vehicle Safety Act, Executive Order 12866, the Department of Transportation's regulatory policies and procedures, the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Executive Order 12988 (Civil Justice Reform), Executive Order 13045 (Protection of Children from Health and Safety Risks), the Paperwork Reduction Act, the National Technology Transfer and Advancement Act, Unfunded Mandates Reform Act, and the National Environmental Policy Act in the August 2006 final rule cited above. Those discussions are not affected by these technical changes.

Privacy Act

Please note that anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://www.dot.gov/privacy.html.*

V. Regulatory Text

List of Subjects in 49 CFR Part 563

Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, Part 563 is amended as follows:

PART 563—EVENT DATA RECORDERS

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

Authority: 49 U.S.C. 322, 30101, 30111, 30115, 30117, 30166, 30168; delegation of authority at 49 CFR 1.50.

■ 2. Revise § 563.3 to read as follows:

§ 563.3 Application.

This part applies to the following vehicles manufactured on or after September 1, 2012, if they are equipped with an event data recorder: passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service. This part also applies to manufacturers of those vehicles. However, vehicles manufactured before September 1, 2013 that are manufactured in two or more stages or that are altered (within the meaning of

49 CFR 567.7) after having been previously certified to the Federal motor vehicle safety standards in accordance with Part 567 of this chapter need not meet the requirements of this part.

§ 563.4 [Removed]

■ 3. Remove and reserve § 563.4 to read as follows:

■ 4. Revise § 563.5 to read as follows:

§ 563.5 Definitions.

(a) *Motor vehicle safety standard definitions.* Unless otherwise indicated, all terms that are used in this part and are defined in the Motor Vehicle Safety Standards, Part 571 of this subchapter, are used as defined therein.

(b) *Other definitions.*

ABS activity means the anti-lock brake system (ABS) is actively controlling the vehicle's brakes.

Air bag warning lamp status means whether the warning lamp required by FMVSS No. 208 is on or off.

Capture means the process of buffering EDR data in a temporary, volatile storage medium where it is continuously updated at regular time intervals.

Delta–V, lateral means the cumulative change in velocity, as recorded by the EDR of the vehicle, along the lateral axis, starting from crash time zero and ending at 0.25 seconds, recorded every 0.01 seconds.

Delta–V, longitudinal means the cumulative change in velocity, as recorded by the EDR of the vehicle, along the longitudinal axis, starting from crash time zero and ending at 0.25 seconds, recorded every 0.01 seconds.

Deployment time, frontal air bag means (for both driver and right front passenger) the elapsed time from crash time zero to the deployment command, or for multi-staged air bag systems, the deployment command for the first stage.

Disposal means the deployment command of the second (or higher, if present) stage of a frontal air bag for the purpose of disposing the propellant from the air bag device.

End of event time means the moment at which the cumulative delta–V within a 20 ms time period becomes 0.8 km/h (0.5 mph) or less, or the moment at which the crash detection algorithm of the air bag control unit resets.

Engine RPM means

(1) For vehicles powered by internal combustion engines, the number of revolutions per minute of the main crankshaft of the vehicle's engine; and

(2) For vehicles not entirely powered by internal combustion engines, the number of revolutions per minute of the motor shaft at the point at which it enters the vehicle transmission gearbox.

Engine throttle, percent full means the driver-requested acceleration as measured by the throttle position sensor on the accelerator pedal compared to the fully-depressed position.

Event means a crash or other physical occurrence that causes the trigger threshold to be met or exceeded, or an air bag to be deployed, whichever occurs first.

Event data recorder (EDR) means a device or function in a vehicle that records the vehicle's dynamic time-series data during the time period just prior to a crash event (e.g., vehicle speed vs. time) or during a crash event (e.g., delta–V vs. time), intended for retrieval after the crash event. For the purposes of this definition, the event data do not include audio and video data.

Frontal air bag means an inflatable restraint system that requires no action by vehicle occupants and is used to meet the applicable frontal crash protection requirements of FMVSS No. 208.

Ignition cycle, crash means the number (count) of power cycles applied to the recording device at the time when the crash event occurred since the first use of the EDR.

Ignition cycle download means the number (count) of power cycles applied to the recording device at the time when the data was downloaded since the first use of the EDR.

Lateral acceleration means the component of the vector acceleration of a point in the vehicle in the y-direction. The lateral acceleration is positive from left to right, from the perspective of the driver when seated in the vehicle facing the direction of forward vehicle travel.

Longitudinal acceleration means the component of the vector acceleration of a point in the vehicle in the x-direction. The longitudinal acceleration is positive in the direction of forward vehicle travel.

Maximum delta–V, lateral means the maximum value of the cumulative change in velocity, as recorded by the EDR, of the vehicle along the lateral axis, starting from crash time zero and ending at 0.3 seconds.

Maximum delta–V, longitudinal means the maximum value of the cumulative change in velocity, as recorded by the EDR, of the vehicle along the longitudinal axis, starting from crash time zero and ending at 0.3 seconds.

Maximum delta–V, resultant means the time-correlated maximum value of the cumulative change in velocity, as recorded by the EDR or processed during data download, along the vector-added longitudinal and lateral axes.

Multi-event crash means the occurrence of 2 events, the first and last of which begin not more than 5 seconds apart.

Non-volatile memory means the memory reserved for maintaining recorded EDR data in a semi-permanent fashion. Data recorded in non-volatile memory is retained after loss of power and can be retrieved with EDR data extraction tools and methods.

Normal acceleration means the component of the vector acceleration of a point in the vehicle in the z-direction. The normal acceleration is positive in a downward direction and is zero when the accelerometer is at rest.

Occupant position classification means the classification indicating that the seating posture of a front outboard occupant (both driver and right front passenger) is determined as being out-of-position.

Occupant size classification means, for the right front passenger, the classification of the occupant as an adult and not as a child, and for the driver, the classification of the driver as not being of small stature.

Pretensioner means a device that is activated by a vehicle's crash sensing system and removes slack from a vehicle safety belt system.

Record means the process of saving captured EDR data into a non-volatile device for subsequent retrieval.

Safety belt status means the feedback from the safety system that is used to determine that an occupant's safety belt (for both driver and right front passenger) is fastened or unfastened.

Seat track position switch, foremost, status means the status of the switch that is installed to detect whether the seat is moved to a forward position.

Service brake, on and off means the status of the device that is installed in or connected to the brake pedal system to detect whether the pedal was pressed. The device can include the brake pedal switch or other driver-operated service brake control.

Side air bag means any inflatable occupant restraint device that is mounted to the seat or side structure of the vehicle interior, and that is designed to deploy in a side impact crash to help mitigate occupant injury and/or ejection.

Side curtain/tube air bag means any inflatable occupant restraint device that is mounted to the side structure of the vehicle interior, and that is designed to deploy in a side impact crash or rollover and to help mitigate occupant injury and/or ejection.

Speed, vehicle indicated means the vehicle speed indicated by a manufacturer-designated subsystem

designed to indicate the vehicle's ground travel speed during vehicle operation.

Stability control means any device that complies with FMVSS No. 126, ''Electronic stability control systems.''

Steering input means the angular displacement of the steering wheel measured from the straight-ahead position (position corresponding to zero average steer angle of a pair of steered wheels).

Suppression switch status means the status of the switch indicating whether an air bag suppression system is on or off.

Time from event 1 to 2 means the elapsed time from time zero of the first event to time zero of the second event.

Time, maximum delta–V, lateral means the time from crash time zero to the point where the maximum value of the cumulative change in velocity is found, as recorded by the EDR, along the lateral axis.

Time, maximum delta–V, longitudinal means the time from crash time zero to the point where the maximum value of the cumulative change in velocity is found, as recorded by the EDR, along the longitudinal axis.

Time, maximum delta–V, resultant means the time from crash time zero to the point where the maximum delta–V resultant occurs, as recorded by the EDR or processed during data download.

Time to deploy, pretensioner means the elapsed time from crash time zero to the deployment command for the safety belt pretensioner (for both driver and right front passenger).

Time to deploy, side air bag/curtain means the elapsed time from crash time zero to the deployment command for a side air bag or a side curtain/tube air bag (for both driver and right front passenger).

Time to first stage means the elapsed time between time zero and the time when the first stage of a frontal air bag is commanded to fire.

Time to n^{th} stage means the elapsed time from crash time zero to the deployment command for the nth stage of a frontal air bag (for both driver and right front passenger).

Time zero means whichever of the following occurs first:

(1) For systems with ''wake-up'' air bag control systems, the time at which the occupant restraint control algorithm is activated; or

(2) For continuously running algorithms,

(i) The first point in the interval where a longitudinal cumulative delta–V of over 0.8 km/h (0.5 mph) is reached within a 20 ms time period; or

(ii) For vehicles that record ''delta–V, lateral,'' the first point in the interval where a lateral cumulative delta–V of over 0.8 km/h (0.5 mph) is reached within a 5 ms time period; or

(3) An air bag deployment.

Trigger threshold means a change in vehicle velocity, in the longitudinal direction, that equals or exceeds 8 km/h within a 150 ms interval. For vehicles that record ''delta–V, lateral,'' trigger threshold means a change in vehicle velocity in either the longitudinal or lateral direction that equals or exceeds 8 km/h within a 150 ms interval.

Vehicle roll angle means the angle between the vehicle's y-axis and the ground plane.

Volatile memory means the memory reserved for buffering of captured EDR data. The memory is not capable of retaining data in a semi-permanent fashion. Data captured in volatile memory is continuously overwritten and is not retained in the event of a power loss or retrievable with EDR data extraction tools.

X-direction means in the direction of the vehicle's X-axis, which is parallel to the vehicle's longitudinal centerline. The X-direction is positive in the direction of forward vehicle travel.

Y-direction means in the direction of the vehicle's Y-axis, which is perpendicular to its X-axis and in the same horizontal plane as that axis. The Y-direction is positive from left to right, from the perspective of the driver when seated in the vehicle facing the direction of forward vehicle travel.

Z-direction means in the direction of the vehicle's Z-axis, which is perpendicular to the X- and Y-axes. The Z-direction is positive in a downward direction.

■ 5. Revise § 563.7 to read as follows:

§ 563.7 Data elements.

(a) *Data elements required for all vehicles.* Each vehicle equipped with an EDR must record all of the data elements listed in Table I, during the interval/time and at the sample rate specified in that table.

TABLE I.—DATA ELEMENTS REQUIRED FOR ALL VEHICLES EQUIPPED WITH AN EDR

Data element	Recording interval/time[1] (relative to time zero)	Data sample rate (samples per second)
Delta–V, longitudinal	0 to 250 ms, or 0 to End of Event Time plus 30 ms, whichever is shorter.	100
Maximum delta–V, longitudinal	0 to 300 ms, or 0 to End of Event Time plus 30 ms, whichever is shorter.	N/A
Time, maximum delta–V	0 to 300 ms, or 0 to End of Event Time plus 30 ms, whichever is shorter.	N/A
Speed, vehicle indicated	−5.0 to 0 sec	2
Engine throttle, % full (or accelerator pedal, % full)	−5.0 to 0 sec	2
Service brake, on/off	−5.0 to 0 sec	2
Ignition cycle, crash	−1.0 sec	N/A
Ignition cycle, download	At time of download[3]	N/A
Safety belt status, driver	−1.0 sec	N/A
Frontal air bag warning lamp, on/off[2]	−1.0 sec	N/A
Frontal air bag deployment, time to deploy, in the case of a single stage air bag, or time to first stage deployment, in the case of a multi-stage air bag, driver.	Event	N/A
Frontal air bag deployment, time to deploy, in the case of a single stage air bag, or time to first stage deployment, in the case of a multi-stage air bag, right front passenger.	Event	N/A
Multi-event, number of events (1, 2)	Event	N/A
Time from event 1 to 2	As needed	N/A

TABLE I.—DATA ELEMENTS REQUIRED FOR ALL VEHICLES EQUIPPED WITH AN EDR—Continued

Data element	Recording interval/time[1] (relative to time zero)	Data sample rate (samples per second)
Complete file recorded (yes, no)	Following other data	N/A

[1]Pre-crash data and crash data are asynchronous. The sample time accuracy requirement for pre-crash time is −0.1 to 1.0 sec (e.g., T = −1 would need to occur between −1.1 and 0 seconds).
[2]The frontal air bag warning lamp is the readiness indicator specified in S4.5.2 of FMVSS No. 208.
[3]The ignition cycle at the time of download is not required to be recorded at the time of the crash, but shall be reported during the download process.

(b) *Data elements required for vehicles under specified conditions.* Each vehicle equipped with an EDR must record each of the data elements listed in column 1 of Table II for which the vehicle meets the condition specified in column 2 of that table, during the interval/time and at the sample rate specified in that table.

TABLE II.—DATA ELEMENTS REQUIRED FOR VEHICLES UNDER SPECIFIED MINIMUM CONDITIONS

Data element name	Condition for requirement	Recording interval/time[1] (relative to time zero)	Data sample rate (per second)
Lateral acceleration	If recorded[2]	0 to 250 ms	100
Longitudinal acceleration	If recorded	0 to 250 ms	100
Normal acceleration	If recorded	0 to 250 ms	100
Delta–V, lateral	If recorded	0 to 250 ms, or 0 to End of Event Time plus 30 ms, whichever is shorter.	100
Maximum delta–V, lateral	If recorded	0 to 300 ms, or 0 to End of Event Time plus 30 ms, whichever is shorter.	N/A
Time, maximum delta–V, lateral	If recorded	0 to 300 ms, or 0 to End of Event Time plus 30 ms, whichever is shorter.	N/A
Time, maximum delta–V, resultant	If recorded	0 to 300 ms, or 0 to End of Event Time plus 30 ms, whichever is shorter.	N/A
Engine RPM	If recorded	–50 to 0 sec	2
Vehicle roll angle	If recorded	–10 up to 50 sec[3]	10
ABS activity (engaged, non-engaged)	If recorded	–50 to 0 sec	2
Stability control (on, off, engaged)	If recorded	–50 to 0 sec	2
Steering input	If recorded	–50 to 0 sec	2
Safety belt status, right front passenger (buckled, not buckled).	If recorded	–10 sec	N/A
Frontal air bag suppression switch status, right front passenger (on, off, or auto).	If recorded	–10 sec	N/A
Frontal air bag deployment, time to nth stage, driver[4].	If equipped with a driver's frontal air bag with a multi-stage inflator.	Event	N/A
Frontal air bag deployment, time to nth stage, right front passenger[4].	If equipped with a right front passenger's frontal air bag with a multi-stage inflator.	Event	N/A
Frontal air bag deployment, nth stage disposal, driver, Y/N (whether the nth stage deployment was for occupant restraint or propellant disposal purposes).	If recorded	Event	N/A
Frontal air bag deployment, nth stage disposal, right front passenger, Y/N (whether the nth stage deployment was for occupant restraint or propellant disposal purposes).	If recorded	Event	N/A
Side air bag deployment, time to deploy, driver.	If recorded	Event	N/A
Side air bag deployment, time to deploy, right front passenger.	If recorded	Event	N/A
Side curtain/tube air bag deployment, time to deploy, driver side.	If recorded	Event	N/A
Side curtain/tube air bag deployment, time to deploy, right side.	If recorded	Event	N/A
Pretensioner deployment, time to fire, driver.	If recorded	Event	N/A
Pretensioner deployment, time to fire, right front passenger.	If recorded	Event	N/A
Seat track position switch, foremost, status, driver.	If recorded	–10 sec	N/A

TABLE II.—DATA ELEMENTS REQUIRED FOR VEHICLES UNDER SPECIFIED MINIMUM CONDITIONS—Continued

Data element name	Condition for requirement	Recording interval/time [1] (relative to time zero)	Data sample rate (per second)
Seat track position switch, foremost, right front passenger.	If recorded	–10 sec	N/A
Occupant size classification, driver	If recorded	–10 sec	N/A
Occupant size classification, right front passenger.	If recorded	–10 sec	N/A
Occupant position classification, driver	If recorded	–10 sec	N/A
Occupant position classification, right front passenger.	If recorded	–10 sec	N/A

[1] Pre-crash data and crash data are asynchronous The sample time accuracy requirement for pre-crash time is –01 to 10 sec (e.g., T = –1 would need to occur between –11 and 0 seconds)
[2] "If recorded" means if the data is recorded in non-volatile memory for the purpose of subsequent downloading
[3] "Vehicle roll angle" may be recorded in any time duration –10 to 50 seconds is suggested
[4] List this element n—1 times, once for each stage of a multi-stage air bag system

■ 6. Revise § 5638 to read as follows:

§ 563.8 Data format

(a) The data elements listed in Tables I and II, as applicable, must be reported in accordance with the range, accuracy, and resolution specified in Table III

TABLE III.—REPORTED DATA ELEMENT FORMAT

Data element	Minimum range	Accuracy	Resolution
Lateral acceleration	−5 g to +5 g	±10%	0.5 g.
Longitudinal acceleration	−50 g to +50 g	±10%	0.5 g.
Normal acceleration	−5 g to +5 g	±10%	0.5 g.
Longitudinal delta–V	−100 km/h to + 100 km/h	±10%	1 km/h.
Lateral delta–V	−100 km/h to + 100 km/h	±10%	1 km/h.
Maximum delta–V, longitudinal	−100 km/h to + 100 km/h	±10%	1 km/h.
Maximum delta–V, lateral	−100 km/h to + 100 km/h	±10%	1 km/h.
Time, maximum delta–V, longitudinal.	0—300 ms, or 0—End of Event Time plus 30 ms, whichever is shorter.	±3 ms	2.5 ms.
Time, maximum delta–V, lateral	0—300 ms, or 0—End of Event Time plus 30 ms, whichever is shorter.	±3 ms	2.5 ms.
Time, maximum delta–V, resultant	0—300 ms, or 0—End of Event Time plus 30 ms, whichever is shorter.	±3 ms	2.5 ms.
Vehicle roll angle	−1080 deg to + 1080 deg	±10%	10 deg.
Speed, vehicle indicated	0 km/h to 200 km/h	±1 km/h	1 km/h.
Engine throttle, percent full (accelerator pedal percent full).	0 to 100%	±5%	1%.
Engine RPM	0 to 10,000 rpm	± 100 rpm.	100 rpm.
Service brake (on, off)	On and Off	N/A	On and Off.
ABS activity	On and Off	N/A	On and Off.
Stability control (on, off, engaged)	On, Off, Engaged	N/A	On, Off, Engaged.
Steering input	−250 deg CW to + 250 deg CCW.	±5%	1%.
Ignition cycle, crash	0 to 60,000	±1 cycle	1 cycle.
Ignition cycle, download	0 to 60,000	±1 cycle	1 cycle.
Safety belt status, driver	On or Off	N/A	On or Off.
Safety belt status, right front passenger.	On or Off	N/A	On or Off.
Frontal air bag warning lamp (on, off).	On or Off	N/A	On or Off.
Frontal air bag suppression switch status.	On, Off, or Auto	N/A	On, Off, or Auto.
Frontal air bag deployment, time to deploy/first stage, driver.	0 to 250 ms	±2 ms	1 ms.
Frontal air bag deployment, time to deploy/first stage, right front passenger.	0 to 250 ms	±2 ms	1 ms.
Frontal air bag deployment, time to n^{th} stage, driver.	0 to 250 ms	±2 ms	1 ms.
Frontal air bag deployment, time to n^{th} stage, right front passenger.	0 to 250 ms	±2 ms	1 ms.
Frontal air bag deployment, n^{th} stage disposal, driver (y/n).	Yes or No	N/A	Yes or No.

TABLE III.—REPORTED DATA ELEMENT FORMAT—Continued

Data element	Minimum range	Accuracy	Resolution
Frontal air bag deployment, n^{th} stage disposal, right front passenger (y/n).	Yes or No	N/A	Yes or No.
Side air bag deployment, time to deploy, driver.	0 to 250 ms	±2 ms	1 ms.
Side air bag deployment, time to deploy, right front passenger.	0 to 250 ms	±2 ms	1 ms.
Side curtain/tube air bag deployment, time to deploy, driver side.	0 to 250 ms	±2 ms	1 ms.
Side curtain/tube air bag deployment, time to deploy, right side.	0 to 250 ms	±2 ms	1 ms.
Pretensioner deployment, time to fire, driver.	0 to 250 ms	±2 ms	1 ms.
Pretensioner deployment, time to fire, right front passenger.	0 to 250 ms	±2 ms	1 ms.
Seat track position switch, foremost, status, driver.	Yes or No	N/A	Yes or No.
Seat track position switch, foremost, status, right front passenger.	Yes or No	N/A	Yes or No.
Occupant size driver occupant 5th female size (y/n).	Yes or No	N/A	Yes or No.
Occupant position size right front passenger child (y/n).	Yes or No	N/A	Yes or No.
Occupant position classification, driver oop (y/n).	Yes or No	N/A	Yes or No.
Occupant position classification, right front passenger oop (y/n).	Yes or No	N/A	Yes or No.
Multi-event, number of events (1, 2).	1 or 2	N/A	1 or 2.
Time from event 1 to 2	0 to 5.0 sec	0.1 sec	0.1 sec.
Complete file recorded (y/n)	Yes or No	N/A	Yes or No.

(b) Acceleration Time-History data and format: the longitudinal, lateral, and normal acceleration time-history data, as applicable, must be filtered either during the recording phase or during the data downloading phase to include:

(1) The Time Step (TS) that is the inverse of the sampling frequency of the acceleration data and which has units of seconds;

(2) The number of the first point (NFP), which is an integer that when multiplied by the TS equals the time relative to time zero of the first acceleration data point;

(3) The number of the last point (NLP), which is an integer that when multiplied by the TS equals the time relative to time zero of the last acceleration data point; and

(4) NLP—NFP + 1 acceleration values sequentially beginning with the acceleration at time NFP * TS and continue sampling the acceleration at TS increments in time until the time NLP * TS is reached.

■ 7. Revise § 563.9 to read as follows:

§ 563.9 Data capture.

The EDR must capture and record the data elements for events in accordance with the following conditions and circumstances:

(a) In a frontal or side air bag deployment crash, capture and record the current deployment data, up to two events. The memory for each air bag deployment event must be locked to prevent any future overwriting of these data.

(b) In a deployment event that involves another type of deployable restraint (e.g., pretensioners, knee bolsters, pedestrian protection, etc.), or in a non-deployment event that meets the trigger threshold, capture and record the current non-deployment data, up to two events, subject to the following conditions:

(1) If an EDR non-volatile memory buffer void of previous-event data is available, the current non-deployment event data is recorded in the buffer.

(2) If an EDR non-volatile memory buffer void of previous-event data is not available, the manufacturer may choose either to overwrite the previous non-deployment event data with the current non-deployment event data, or not to record the current non-deployment event data.

(3) EDR buffers containing previous deployment-event data must not be overwritten by the current non-deployment event data.

Issued: January 8, 2008.

Nicole R. Nason,

Administrator.

[FR Doc. E8–407 Filed 1–11–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070227048–7091–02]

RIN 0648–XE82

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Modification of the Yellowtail Flounder Landing Limit for the U.S./Canada Management Area

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

ACTION: Temporary rule; trip limit change.

SUMMARY: NMFS announces that the Administrator, Northeast (NE) Region,

NMFS (Regional Administrator), is decreasing the Georges Bank (GB) yellowtail flounder trip limit to 1,500 lb (680 kg) for NE multispecies days-at-sea (DAS) vessels fishing in the U.S./Canada Management Area. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan and is intended to prevent over-harvest of the Total Allowable Catch (TAC) for GB yellowtail flounder. This action is being taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to slow the catch rate of GB yellowtail flounder to provide opportunity for vessels to continue fishing while helping to ensure that the TAC will not be exceeded during the 2007 fishing year (May 1, 2007 - April 20, 2008).

DATES: Effective 0001 hours local time January 10, 2008, through April 30, 2008.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at § 648.85(a)(3)(iv)(C) and (D). The regulations authorize vessels issued a valid Federal limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for the 2007 fishing year is 900 mt. The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to increase or decrease the trip limit in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocation.

On April 24, 2007 (72 FR 20287), based upon the reduced 2007 TAC for GB yellowtail flounder (a 43–percent reduction from 2006) and projections of harvest rates in the fishery, the trip limit for GB yellowtail flounder was set at 3,000 lb (1,361 kg) for the 2007 fishing year, to prevent the over-harvest of the 2007 GB yellowtail flounder TAC, and to prevent a premature closure of the Eastern U.S./Canada Management Area and, therefore, reduced opportunities to fish for Eastern GB cod and haddock in the Eastern U.S./Canada Area. On November 27, 2007, the GB yellowtail flounder trip limit was increased to 7,500 lb (3,402 kg) because the 3,000–lb (1,361–kg) trip limit was projected to result in the under-harvest of the TAC.

According to the most recent Vessel Monitoring System (VMS) reports and other available information, the cumulative GB yellowtail flounder catch, as of January 9, 2008, is estimated to be 82 percent of the TAC, with a projection that the complete harvest of the TAC would occur by January 23, 2008. Harvest of the GB yellowtail flounder TAC would prevent the reopening of the Eastern U.S./Canada Area to harvest the remaining portions of the GB cod and GB haddock TACs. Decreasing the GB yellowtail flounder trip limit to 1,500 lb (680 kg) from 7,500 lb (3,402 kg) is expected to reduce the number of trips made to the Western U.S./Canada Area to target GB yellowtail flounder, decrease landings of yellowtail flounder without increasing discards, and result in the achievement of the TAC during the fishing year without exceeding it. Based on this information, the Regional Administrator is decreasing the current 7,500–lb (3,402–kg) trip limit in the U.S./Canada Area to 1,500 lb (680 kg) per trip, effective 0001 hours local time January 10, 2008, through April 30, 2008. GB yellowtail flounder landings will continue to be closely monitored. Further inseason adjustments to increase or decrease the trip limit may be considered, based on updated catch data and projections. Should 100 percent of the TAC allocation for GB yellowtail flounder be projected to be harvested, all vessels would be prohibited from harvesting, possessing, or landing yellowtail flounder from the entire U.S./Canada Management Area, and the Eastern U.S./Canada Area would be closed to limited access NE multispecies DAS vessels for the remainder of the fishing year.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment; as well as the delayed effectiveness for this action, because prior notice and comment, and a delayed effectiveness, would be impracticable and contrary to the public interest. The regulations under § 658.85(a)(3)(iv)(D) grant the Regional Administrator the authority to adjust the GB yellowtail flounder trip limit to prevent over-harvesting or under-harvesting the TAC allocation. This action would reduce the GB yellowtail trip limit for all NE multispecies DAS vessels fishing in the U.S./Canada Management Area for the remainder of the 2007 fishing year. This action is intended to prevent the over-harvest of the GB yellowtail flounder TAC while allowing continued opportunities to achieve optimum yield in the NE multispecies fishery.

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D). It is important to take this action immediately because the rapid catch rate observed since implementing the 7,500–lb (3,402–kg) GB yellowtail flounder trip limit on November 27, 2007, is projected to result in the TAC being achieved on January 23, 2008. This would require that the Eastern U.S./Canada Area remain closed for the remainder of the 2007 fishing year, preventing the reopening the Eastern U.S./Canada Management Area to harvest the remaining portions of the GB cod and GB haddock TACs. Allowing the current rapid catch rate (33 percent of the TAC was caught between December 6, 2007, and January 3, 2008) to continue during the period necessary to publish and receive comments on a proposed rule could potentially allow the GB yellowtail flounder harvest to exceed the GB yellowtail flounder TAC for the 2007 fishing year. Exceeding the 2007 TAC for GB yellowtail flounder would increase mortality of this overfished stock beyond that evaluated during the development of Amendment 13, resulting in decreased revenue for the NE multispecies fishery, increased negative economic impacts to vessels operating in the U.S./Canada Area, a reduced chance of achieving optimum yield in the groundfish fishery, and unnecessary delays to the rebuilding of this overfished stock. Exceeding the 2007 GB yellowtail flounder TAC would also necessitate that any overages during the 2007 fishing year be deducted from the GB yellowtail TAC for the 2008 fishing year. Reducing the 2008 TAC due to any 2007 TAC overage caused by delaying this action would create an unnecessary burden on the fishing industry and further negative economic and social impacts that were not previously considered.

The potential of decreasing the GB yellowtail flounder trip limit was announced to the public when the 7,500–lb (3,402–kg) trip limit was implemented on November 27, 2007. Further, the public is able to obtain information on the rate of harvest of the GB yellowtail flounder TAC via the Northeast Regional Office website (*http://www.nero.noaa.gov*), which provides at least some advanced notice of a potential action to prevent the TAC for GB yellowtail flounder from being exceeded during the 2007 fishing year. The Regional Administrator's authority to decrease the trip limit for GB

yellowtail flounder in the U.S./Canada Management Area to ensure the shared U.S./Canada stocks of fish are harvested, but not exceeded, was considered and open to public comment during the development of Amendment 13 and FW 42. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: January 9, 2008.

Emily H. Menashes,

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

[FR Doc. 08–91 Filed 1–9–08; 12:57 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 9
Monday, January 14, 2008

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 HOMELAND SECURITY

Office of the Secretary

6 CFR Part 19

44 CFR Part 206

[Docket No. DHS–2006–0065]

RIN 1601–AA40

Nondiscrimination in Matters Pertaining to Faith-Based Organizations

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would implement Executive Branch policy that, within the framework of constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing with other organizations for Federal funding and participate, on an equal footing with other organizations, in Federally-funded activities.

DATE: Written comments must be received on or before February 13, 2008.

ADDRESSES: You may submit comments, identified by agency name and docket number DHS–2006–0065, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Facsimile:* Federal eRulemaking portal at 866–466–5370. Include the docket number on the cover sheet.
- *Mail:* Greg DiNapoli, Deputy Director, Center for Faith-based and Community Initiatives, Federal Emergency Management Agency, 500 C St., SW., Washington, DC. 20472. To ensure proper handling, please reference DHS Docket No. DHS–2006–0065 on your correspondence. This mailing address may also be used for paper, disk, or CD—ROM submissions.

FOR FURTHER INFORMATION CONTACT: Greg DiNapoli, Deputy Director, Center for Faith-based and Community Initiatives, (202) 646–4317.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. The Department of Homeland Security (DHS) also invites comments that relate to the potential economic, environmental, or federalism effects of this proposed rule. Comments that will provide the most assistance to DHS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. See **ADDRESSES** above for information on how to submit comments.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected by appointment at the Center for Faith-based and Community Initiatives, 500 C St., NW., Washington, DC 20472. Please contact (202) 646–4317 for an appointment.

II. Background

President Bush, through Executive Order 13279 (''Equal Protection of the Laws for Faith-Based and Community Organizations''), has directed federal agencies to ensure that Federal policies and programs are fully open to faith-based and community organizations in a manner that is consistent with the United States Constitution. *See* 67 FR 77141 (Dec. 16, 2002) [1]. The President also directed DHS to create a Center for Faith-based and Community Initiatives to, *inter alia,* lead the Departmental effort to remove barriers to the participation of faith-based and community organizations in the Department's programs and initiatives through reform of regulations, procurement, and other internal policies and practices. Executive Order 13397 ''Responsibilities of the Department of Homeland Security with Respect to Faith-Based and Community Initiatives,'' 71 FR 12273 (Mar. 9, 2006).

DHS believes that faith-based organizations have a significant role to play in various programs administered by DHS and in homeland security generally. For example, faith-based organizations have long been on the front lines in matters of disaster preparedness and relief, providing food, supplies and shelter to others in need.

The primary reason for past exclusion of faith-based organizations from receipt of Federal funds generally has been a concern with the separation of ''church and state.'' The First Amendment provides that ''Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *'' *U.S. Const.,* Amdt. I (1791). The Administration believes, however, that the First Amendment's prohibition against the establishment of religion is neither offended nor implicated when a faith-based organization receives Federal funds or participates in a Federally-funded program in order to perform a vital mission that is not inherently religious in nature. Further, DHS believes that the First Amendment does not preclude the provision of assistance to a faith-based organization where such assistance is available on equal terms to similarly situated non-faith-based organizations.

To that end, in the case of private, nonprofit faith-based organizations seeking public assistance to repair, restore or replace otherwise eligible facilities damaged in a disaster, DHS has determined that such organizations should be eligible for public assistance on the same terms as similarly situated non-faith-based, private nonprofit organizations, which is consistent with current DHS practice and policy.

III. Proposed Rule

A. Purpose of the Proposed Rule.

Consistent with the President's initiative, this proposed rule would amend DHS' regulations to make clear that faith-based organizations are eligible to participate in any social or community service programs established, administered or funded by DHS (including any component of DHS) (collectively, ''DHS service programs''), and are eligible to seek and receive Federal financial assistance from DHS service programs where such assistance is available to other organizations. The

[1] On May 16, 2006, Executive Order 13279 was amended by Executive Order 13403 to include DHS. 71 FR 28543.

objective of this proposed rule is to ensure that DHS service programs are open to all qualified organizations, regardless of their religious character. This rule also aims to set forth the conditions for seeking or receiving DHS support related to DHS service programs and the permissible uses to which such support may be put. In addition, this proposed rule is designed to ensure that DHS service programs are implemented in a manner consistent with the requirements of the Constitution. Separately, the proposed rule recognizes the eligibility of faith-based organizations for repair, restoration or replacement of certain nonprofit facilities under Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (42 U.S.C. 5172).

B. Proposed Amendments to DHS Regulations

DHS proposes to amend its regulations by adding a new Part 19—Nondiscrimination in Matters Pertaining to Faith-Based Organizations—and to further amend its regulations at 44 CFR 206.226, to address the areas identified below.

1. Participation by Faith-Based Organizations in DHS Service Programs

The proposed rule clarifies in section 19.3 that eligible organizations may not be excluded from the competition for DHS financial support for, or participation in, social service programs simply because such organizations are faith-based. Specifically, faith-based organizations are eligible to compete for DHS financial support, and to participate in DHS service programs, on the same basis, and under the same eligibility requirements, as all other non-governmental organizations.

DHS, DHS social service intermediary providers, and State and local governments administering DHS support are prohibited from discriminating for or against organizations on the basis of the organizations' religious character or affiliation.

2. Inherently Religious Activities

DHS recognizes that Federal funds disbursed through DHS service programs cannot be used to advance any religious agenda. To that end, the proposed rule describes in section 19.4 the requirements related to inherently religious activities in DHS service programs administered or supported by the department. By way of example, a faith-based organization could receive funding to obtain food or clothing to distribute as part of a disaster relief program. It could not, however, proselytize while distributing those items, or otherwise utilize DHS support for activities such as worship or religious instruction.

While the organization is, of course, free to engage in such activities, the activities must be offered separately, in time or location, from the social service programs receiving direct DHS support. Moreover, participation in inherently religious activities must be voluntary for the beneficiaries of such programs. Organizations may inform program beneficiaries of their religious activities, but, should they do so, they must also advise them that receipt of any benefits is not contingent on participation in religious activity.

3. Nondiscrimination Requirements

The proposed rule clarifies that an organization that receives direct DHS financial assistance pursuant to any DHS Service program shall not favor or discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, professed belief or religious practice.

4. Independence of Faith-Based Organizations

Proposed section 19.6 would clarify that a faith-based organization that participates in a DHS program or activity will retain its independence from Federal, State and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. Among other things, faith-based organizations may use space in their facilities to provide services under a DHS program, without removing religious items or symbols. In addition, a faith-based organization participating in a program funded by DHS retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members, and otherwise govern itself on a religious basis and include religious references in its organization's mission statements and other governing documents.

5. Exemption From Title VII Employment Discrimination Requirements

Section 19.7 of the proposed rule clarifies that a faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1), is not forfeited when the organization participates in a DHS program.

Participation in some DHS programs, however, is subject to independent statutory or regulatory provisions that impose certain nondiscrimination requirements on all grantees. This proposed rule is not intended to alter or waive these requirements for faith-based or community organizations; accordingly, grantees should consult with the appropriate DHS program office to determine the scope of any applicable requirements.

6. Commingling of Federal and State and Local Funds

The proposed rule clarifies that if a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, the requirements of proposed section 19.8 will apply to all of the commingled funds. If a State or local government is required to contribute matching funds to supplement a federally funded activity, the matching funds are considered commingled with the Federal assistance and therefore subject to the requirements of proposed section 19.8. As with Title VII issues, grantees should consult with the appropriate DHS program office to determine the scope of any applicable requirements.

7. Grants for Repair, Restoration or Replacement of Damaged Facilities

The proposed rule would ensure that private nonprofit organizations that qualify for public assistance under disaster relief grant programs, but which are inherently religious in nature, are not subjected to discrimination because of their religious or faith-based status.

DHS believes that private, nonprofit organizations of a religious nature which provide education, medical or custodial care, or other eligible services, should be eligible to receive public assistance for the repair, restoration or replacement of damaged facilities or for hazard mitigation on the same terms as similarly situated non-religious private, nonprofit organizations.

C. Amendments to Emergency Management Regulations

The proposed rule would also make specific changes to the regulations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended. The amendments would specifically provide that if an organization is otherwise eligible to receive funding under this section, the organization's status as faith-based will not be considered in

determining whether to authorize a grant or the amount of any such grant.

IV. Regulatory Procedures

A. Executive Order 12866

This rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866.

B. Regulatory Flexibility Act

The Secretary of Homeland Security, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule would not have a significant economic impact on a substantial number of small entities as that term is defined in 5 U.S.C. 601(6). The proposed rule would not impose any new costs, or modify existing costs, applicable to recipients of DHS support. Rather, the purpose of the proposed rule is to clarify that DHS' social service programs are open to all qualified organizations, regardless of their religious character, and to establish clearly the permissible uses to which DHS support may be put.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

D. Federalism

Pursuant to Executive Order 13132, DHS has determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

For the reasons set forth above, DHS proposes to amend 6 CFR by adding a new part 19 and 44 CFR part 206 as follows:

PART 19—NONDISCRIMINATION IN MATTERS PERTAINING TO FAITH-BASED ORGANIZATIONS

1. Part 19 to title 6 of the Code of Federal Regulations is added to read as follows:

PART 19—NONDISCRIMINATION IN MATTERS PERTAINING TO FAITH-BASED ORGANIZATIONS

Sec.

19.1 Equal participation of faith-based organizations in Department of Homeland Security programs and activities.
19.2 Definitions.
19.3 Equal participation faith-based organizations in DHS programs and activities.
19.4 Inherently religious activities.
19.5 Nondiscrimination requirements.
19.6 Independence of faith-based organizations.
19.7 Exemption from Title VII employment discrimination requirements.
19.8 Commingling of Federal and State or local funds.

Authority: 5 U.S.C. 301; 6 U.S.C. 111, 112; E.O. 13279, 67 FR 77141 and E.O. 13403, 71 FR 28543.

§ 19.1 Equal participation of faith-based organizations in Department of Homeland Security programs and activities.

It is the policy of Department of Homeland Security (DHS) to ensure the equal participation of faith-based organizations in social service programs administered or supported by DHS or its component agencies. The equal participation policies and requirements contained in this section are generally applicable to faith-based organizations participating or seeking to participate in any such programs. More specific policies and requirements regarding the participation of faith-based organizations in individual programs may be provided in the regulations governing those programs.

§ 19.2 Definitions.

(a) *Financial assistance* means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food, direct appropriations, or other assistance, including materiel for emergency response and incident management.

(b) *Social service program* means a program in the United States designed to provide relief or services to persons in need of such relief or services, or a program designed to assist communities in all-hazards preparedness, response and recovery activities. Social service programs include, but are not limited to: Disaster relief programs; preparedness programs; the preparation and delivery of meals and services related to soup kitchens or food banks; emergency medical services; health support services; or services related to the integration, processing or resettlement of immigrants and refugees coming into the United States. However, it shall not include any program providing funds for the repair, restoration or replacement of, or hazard mitigation for, damaged private, nonprofit facilities, as provided for in sections 404 and 406 of the Robert T. Stafford Act, Public Law 93–288, as amended (42 U.S.C. 5172).

(c) *Inherently religious activities* mean sectarian activities such as worship, proselytization and religious instruction. An activity is not inherently religious merely because it is motivated by religious faith.

§ 19.3 Equal participation faith-based organizations in DHS programs and activities.

(a) Faith-based organizations are eligible, on the same basis as any other organization, to seek and receive financial assistance from the Department of Homeland Security for social service programs or to participate in social service programs administered or financed by DHS.

(b) Neither DHS, nor a State or local government, nor any other entity that administers any program or activity funded by DHS, shall discriminate for or against an organization on the basis of the organization's religious character or affiliation.

(c) Nothing in this part shall be construed to preclude DHS, or any of its components from accommodating religious organizations and persons to the fullest extent consistent with the Constitution and laws of the United States.

§ 19.4 Inherently religious activities.

(a) Organizations that receive direct financial assistance from DHS to participate in or administer any social service program or activity may not engage in inherently religious activities as part of the programs or services funded or administered by DHS.

(b) Organizations receiving financial assistance from DHS pursuant to DHS social service programs are free to engage in inherently religious activities, but such activities must be

(1) Offered separately, in time or location, from the programs, activities, or services supported by direct DHS funds pursuant to DHS social service programs; and

(2) Voluntary for the beneficiaries of the programs, activities or services provided.

(c) It is not a violation of this section for a faith-based organization to inform persons of the organization's religious activities, provided that the organization makes it clear that receipt of any benefits or services supported by direct financial assistance from DHS pursuant

to DHS social service programs, or provided in conjunction with any benefits or services supported by direct financial assistance from DHS pursuant to DHS social service programs, is in no way contingent on participation or attendance at such activities.

(d) The restrictions on inherently religious activities set forth in this section do not apply to programs where DHS funds are provided to chaplains to work with inmates in detention facilities or where DHS funds are provided to religious or other organizations for programs in detention facilities, in which such organizations assist chaplains in carrying out their duties.

§ 19.5 Nondiscrimination requirements.

An organization that receives direct financial assistance from DHS pursuant to a social service program for any program or activity shall not favor or discriminate against a beneficiary or prospective beneficiary of said program or activity on the basis of religion, belief or religious practice.

§ 19.6 Independence of faith-based organizations.

(a) A faith-based organization that participates in a social services program administered by DHS or receives direct financial assistance from DHS for its own program or activity will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its beliefs.

(b) Faith-based organizations may use space in their facilities to provide social services utilizing financial assistance from DHS without removing or concealing religious articles, texts, art or symbols.

(c) A faith-based organization utilizing financial assistance from DHS for social services programs retains its authority over internal governance, and may also retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

§ 19.7 Exemption from Title VII employment discrimination requirements.

(a) A faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1), is not forfeited when the organization seeks or receives funding from DHS for a social services program or otherwise participates in a DHS program.

(b) Where a DHS program contains independent statutory or regulatory provisions that impose nondiscrimination requirements on all grantees, the provisions are not waived or mitigated by this regulation. Accordingly, grantees should consult with the appropriate DHS program office to determine the scope of any applicable requirements.

§ 19.8 Commingling of Federal and State or local funds.

(a) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them.

(b) If the funds are commingled, the requirements of this section apply to all of the commingled funds.

(c) If a State or local government is required to contribute matching funds to supplement a federally funded activity, the matching funds are considered commingled with the Federal assistance and therefore subject to the requirements of this section.

44 CFR CHAPTER 1—FEDERAL EMERGENCY MANAGEMENT AGENCY, DEPARTMENT OF HOMELAND SECURITY

Subchapter A—General

PART 206—[AMENDED]

2. The authority citation for 44 CFR part 206 is revised to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979, Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR 1979 Comp., p. 412; E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214; sections 206.226 and 206.434 are also issued under the authority of 5 U.S.C. 301; 6 U.S.C. 111, 112; E.O. 13279, 67 FR 77141 and E.O. 13403, 71 FR 28543.

Subpart H—[Amended]

3. A new paragraph (l) to § 206.226 is added to read as follows:

§ 206.226 Restoration of damaged facilities.

* * * * *

(l) *Facilities owned, operated or controlled by faith-based organizations*—If an organization is otherwise eligible to receive funding under this section, the organization's status as faith-based shall not be considered in determining whether to authorize a grant or the amount of any such grant.

Subpart N—[Amended]

4. Section 206.434(a)(2) is revised to read as follows:

§ 206.434 Eligibility.

(a) * * *

(2) Private nonprofit organizations or institutions that own or operate a private nonprofit facility as defined in § 206.221. If an organization is otherwise eligible to receive funding under this section, the organization's status as faith-based shall not be considered in determining whether to authorize a grant or the amount of any such grant.

* * * * *

Dated: December 31, 2007.

Michael Chertoff,

Secretary.

[FR Doc. E8–463 Filed 1–11–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0012; Directorate Identifier 2007–NM–204–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –400ER 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 767–200, –300, and –400ER series airplanes. This proposed AD would require an inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service units and the flight attendant and lavatory oxygen boxes, as applicable. This proposed AD would also require related investigative/corrective actions if necessary. This proposed AD results from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We are proposing 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: We must receive comments on this proposed AD by February 28, 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: 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:

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–2008–0012; Directorate Identifier 2007–NM–204–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 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 767–200, –300, and –400ER series airplanes. Therefore, the Model 767–200, –300, and –400ER series airplanes may be subject to the identified unsafe condition.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 767–35–0054, dated July 6, 2006. The service bulletin describes procedures for a general visual inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service units and the flight attendant and lavatory oxygen boxes, as applicable. The service bulletin also describes procedures for doing related investigative and corrective actions. The related investigative action is a general visual inspection of the 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 between January 1, 2002, and March 1, 2006. The corrective action is the installation of a new oxygen mask having an improved flow indicator, if the existing oxygen mask is found to be one of the discrepant masks.

Boeing Special Attention Service Bulletin 767–35–0054 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 getting a new oxygen mask 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 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.

Clarification Between the Proposed AD and Service Bulletin

Although Boeing Special Attention Service Bulletin 767–35–0054 specifies to install a new oxygen mask having an improved flow indicator, the intent of the service bulletin is to replace it with either a new or modified oxygen mask 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

There are about 688 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 242 airplanes of U.S. registry. The proposed actions would take about 53 work hours per airplane, with an average of 360 oxygen masks 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 $1,026,080, or $4,240 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–2008–0012; Directorate Identifier 2007–NM–204–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –400ER series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 767–35–0054, dated July 6, 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 the passenger service units and the flight attendant and lavatory oxygen boxes, as applicable, and do the applicable related investigative and corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–35–0054, dated July 6, 2006; except where the service bulletin specifies installing a new oxygen mask, replace the oxygen mask with a new or modified oxygen mask 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.

Issued in Renton, Washington, on December 26, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–378 Filed 1–11–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0017; Directorate Identifier 2007–NM–268–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 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 [the] ground, the FAA has published Special Federal Aviation Regulation No. 88 (SFAR–88) in June 2001 [which] required [conducting] a design review against explosion risks.
>
> * * * * *

The potential of ignition sources (in certain fuel pumps, fuel switches, refuel shutoff valves, and optical sensors/mechanical switches), 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 February 13, 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, FAA, Transport Airplane Directorate, 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–2008–0017; Directorate Identifier 2007–NM–268–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 Airworthiness Directive 2007–0248, dated September 7, 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 [the] ground, the FAA has published Special Federal Aviation Regulation No. 88 (SFAR–88) in June 2001 [which] required [conducting] a design review against explosion risks.
>
> 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.
>
> As a consequence of the design review mentioned above, this Airworthiness Directive (AD) requires a modification to install extra protection of wiring installed in fuel tank conduits.

The modification includes an inspection for any damage of the wiring to the fuel pumps, fuel level switches, the refuel shut off valves, and optical sensors/mechanical switches, and if any damage is found, contacting SAAB for repair and repair. These fuel pumps, fuel switches, refuel shutoff valves, and optical sensors/mechanical switches are potential ignition sources. 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 340–28–026, dated July 5, 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 $0 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 $1,395,200, or $6,400 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–2008–0017; Directorate Identifier 2007–NM–268–AD.

Comments Due Date

(a) We must receive comments by February 13, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 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 [the] ground, the FAA has published Special Federal Aviation Regulation No. 88 (SFAR–88) in June 2001 [which] required [conducting] a design review against explosion risks.

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.

As a consequence of the design review mentioned above, this Airworthiness Directive (AD) requires a modification to install extra protection of wiring installed in fuel tank conduits.

The potential of ignition sources (in certain fuel pumps, fuel switches, refuel shutoff valves, and optical sensors/mechanical switches), in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The modification includes an inspection for any damage of the wiring to the fuel pumps, fuel level switches, the refuel shut off valves, and optical sensors/mechanical switches, and if any damage is found, contacting SAAB for repair.

Actions and Compliance

(f) Within 72 months after the effective date of this AD, unless already done, perform Modification No. 3164 (right-hand wing) and Modification No. 3165 (left-hand wing) in accordance with SAAB Service Bulletin 340–28–026, dated July 5, 2007. The modifications include the following actions.

(1) Removal of the fuel pumps 5QM and 6QM, the fuel switches 31EB, 32EB, 9QA, 10QA, 11QA, and 12QA, and the refuel shutoff valves 15QA and 16QA, and the optical sensors/mechanical switches 13QA and 14QA.

(2) Inspection of the wiring to the fuel pumps, fuel level switches, the refuel shutoff valves, and optical sensors/mechanical

switches, and if any damage is found, contact SAAB for repair instructions and repair before further flight.

(3) Twisting of the fuel pump wiring, fuel level switches wiring, refuel shutoff valves wiring, and optical sensors/mechanical switches wiring.

(4) Installation of a shrinkable tube to the fuel pumps wiring, fuel level switches wiring, refuel shutoff valves wiring and optical sensors/mechanical switches wiring.

(5) Installation of fuel pumps, the fuel level switches, the refuel shutoff valves, and the optical sensors/mechanical switches.

(6) Operational and functional test of the fuel measuring/indicating system.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

(1) The MCAI does not specify corrective action for the inspection specified in paragraph (f)(2) of this AD. This AD requires contacting SAAB for repair instructions and repairing before further flight.

(2) The MCAI does not include actions for optical sensors/mechanical switches 13QA and 14QA; however, paragraph (f) of this AD includes modification of those optical sensors/mechanical switches.

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, 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, FAA, Transport Airplane Directorate, 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 2007–0248, dated September 7, 2007, and SAAB Service Bulletin 340–28–026, dated July 5, 2007, for related information.

Issued in Renton, Washington, on January 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–375 Filed 1–11–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0011; Directorate Identifier 2007–NM–203–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 certain Boeing Model 757 airplanes. This proposed AD would require an inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service units and the lavatory and attendant box assemblies, and corrective action if necessary. This proposed AD results from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We are proposing 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: We must receive comments on this proposed AD by February 28, 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: 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:

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–2008–0011; Directorate Identifier 2007–NM–203–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 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 757 airplanes. Therefore, the Model 757 airplanes may be subject to the identified unsafe condition.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 757–35–0028, dated April 9, 2007. The service bulletin describes procedures for doing a general visual inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service units (PSUs) and the lavatory and attendant box assemblies. The service bulletin also describes procedures for doing the corrective action if necessary and other specified action. The corrective action is to repair any B/E Aerospace oxygen mask assembly with a manufacturing date after January 1, 2002, and before March 1, 2006. The service bulletin also specifies that as an alternative to doing the repair (rework), the oxygen mask assembly may be replaced with a new oxygen mask.

Boeing Special Attention Service Bulletin 757–35–0028 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 repairing the oxygen mask assembly. 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 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.

Clarification Between the Proposed AD and Service Bulletin

Although Boeing Special Attention Service Bulletin 757–35–0028 specifies to repair the oxygen mask assembly, 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

There are about 1,035 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 640 airplanes of U.S. registry. The proposed actions would take about 20 work hours per airplane, for an average of 240 oxygen masks 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 $1,024,000, or $1,600 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–2008–0011; Directorate Identifier 2007–NM–203–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200CB, –200PF, and –300 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 757–35–0028, dated April 9, 2007.

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 Corrective/Other Specified 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 the passenger service units and the lavatory and attendant box assemblies, and do the applicable corrective action, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–35–0028, dated April 9, 2007; except where the service bulletin specifies repairing the oxygen mask assembly, replace it with a new or modified oxygen mask assembly having an improved flow indicator. The corrective action and other specified action 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.

Issued in Renton, Washington, on December 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–376 Filed 1–11–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0018; Directorate Identifier 2007–NM–145–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes and A300–600 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede two existing airworthiness directives (ADs). One existing AD applies to certain Airbus Model A310 series airplanes and requires repetitive inspections for cracking of the flap transmission shafts, and replacing the transmission shafts if necessary. That existing AD also provides an optional terminating action for the repetitive inspections. The other existing AD applies to all Airbus Model A310 and A300–600 series airplanes and requires a one-time inspection of the trimmable horizontal stabilizer actuator (THSA), corrective actions if necessary, and follow-on repetitive tasks. This proposed AD would require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations and maintenance tasks for aging systems maintenance. This proposed AD results from the manufacturer's determination that life limitations and maintenance tasks are necessary in order to ensure continued operational safety of the affected airplanes. We are proposing this AD to prevent reduced structural integrity of these airplanes due to the failure of system components.

DATES: We must receive comments on this proposed AD by February 13, 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

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

SUPPLEMENTARY INFORMATION:

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–2008–0018; Directorate Identifier 2007–NM–145–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 May 8, 2006, we issued AD 2006–10–11, amendment 39–14595 (71 FR 28254, May 16, 2006), for certain Airbus Model A310 series airplanes. That AD requires repetitive inspections for cracking of the flap transmission shafts, and replacing the transmission shafts if necessary. That AD also provides an optional terminating action for the repetitive inspections. That AD resulted from reports of longitudinal cracks due to stress corrosion in the transmission

shafts between the power control unit (PCU) and the torque limiters of the flap transmission system. We issued that AD to detect and correct cracking of the flap transmission shaft, which could compromise shaft structural integrity and lead to a disabled flap transmission shaft and reduced controllability of the airplane.

On July 14, 2006, we issued AD 2006–15–10, amendment 39–14690 (71 FR 42021, July 25, 2006), for all Airbus Model A310 and A300–600 series airplanes and requires a one-time inspection of the trimmable horizontal stabilizer actuator (THSA), corrective actions if necessary, and follow-on repetitive tasks. That AD resulted from reports of THSAs that have reached their design operational life. We issued that AD to extend the operational life of the THSA to prevent a possible failure of high-time THSAs, which could result in reduced controllability of the airplane.

Actions Since Existing ADs Were Issued

Since we issued ADs 2006–10–11 and 2006–15–10, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, notified us that an unsafe condition may exist on all Airbus Model A310 and A300–600 series airplanes. The EASA advises that Airbus has issued aging system maintenance limitations and maintenance tasks to address airplane systems that operate beyond their original limits, which could result in increased potential for failure of these systems and consequent reduced structural integrity of these airplanes.

Relevant Service Information

Airbus has issued A300–600 ALS—Airworthiness Limitations Section, and A310 ALS—Airworthiness Limitations Section, both dated May 31, 2006, which are a repository for stand-alone documents that are approved independently from each other. The Airbus ALSs comprises the following documents:

- ALS Part 1—Safe Life Airworthiness Limitation Items
- ALS Part 2—Damage-Tolerant Airworthiness Limitation Items
- ALS Part 3—Certification Maintenance Requirements
- ALS Part 4—Aging Systems Maintenance
- ALS Part 5—Fuel Airworthiness Limitations

Airbus A310 ALS Part 4—Aging Systems Maintenance, Revision 01, dated December 21, 2006, and A300–600 ALS Part 4—Aging Systems Maintenance, Revision 01, dated December 21, 2006, describe aging system maintenance limitations and maintenance tasks.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2007–0092, dated April 10, 2007, to ensure the continued airworthiness of these airplanes in the European Union.

FAA's Determination and Requirements of the Proposed AD

These airplanes are manufactured in France 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, EASA has kept the FAA informed of the situation described above. We have examined the EASA'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 ADs 2006–10–11 and 2006–15–10 and would retain the requirements of the existing ADs. This proposed AD would also require revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new limitations and maintenance tasks for aging systems maintenance. Doing an inspection in accordance with the ALS revision would terminate the requirements of the existing ADs.

Explanation of Change to Applicability

We have revised the applicability of the existing ADs to identify model designations as published in the most recent type certificate data sheet for the affected models.

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	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 2006–10–11)	1	$80	$80, per inspection cycle.	59	$4,720, per inspection cycle.
Inspection (required by AD 2006–15–10)	3	80	240	213	51,120.
Repetitive follow-on tasks (required by AD 2006–15–10).	12	80	960, per inspection cycle.	213	204,480, per inspection cycle.
ALS Revision (new proposed action)	1	80	80	213	17,040.

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 39–14595 (71 FR 28254, May 16, 2006) and amendment 39–14690 (71 FR 42021, July 25, 2006) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2008–0018; Directorate Identifier 2007–NM–145–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 13, 2008.

Affected ADs

(b) This AD supersedes AD 2006–10–11 and AD 2006–15–10.

Applicability

(c) This AD applies to all Airbus Model A310 series airplanes and A300–600 series airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (r) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1.

Unsafe Condition

(d) This AD results from the manufacturer's determination that life limitations and maintenance tasks are necessary in order to ensure continued operational safety of the affected airplanes. We are issuing this AD to prevent reduced structural integrity of these airplanes due to the failure of system components.

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.

Restatement of Requirements of AD 2006–10–11

Inspection and Corrective Action

(f) For Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, except for airplanes on which Airbus Modification 12247 has been embodied in production: At the earlier of the compliance times specified in paragraph (f)(1) or (f)(2) of this AD, perform a detailed inspection for stress corrosion cracking of the flight transmission shafts located between the power control unit (PCU) and the torque limiters in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–27–2092, Revision 02, dated April 11, 2005. Thereafter, repeat the inspections as required by paragraph (g) of this AD. Before further flight, replace any cracked transmission shaft discovered during any inspection required by this AD with a new or reconditioned shaft, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–27–2095, dated March 29, 2000. Doing an inspection in accordance with paragraph (o) or (p) of this AD terminates the requirements of this paragraph.

(1) Within 2,000 flight hours after the last flap asymmetry protection test performed in accordance with Airbus A310 Maintenance Planning Document (MPD) Task 275600–01–1.

(2) Within 8,000 flight cycles after the last flap asymmetry protection test performed in accordance with Airbus A310 MPD Task 275600–02–1 or 800 flight cycles after June 20, 2006 (the effective date of AD 2006–10–11), whichever comes later.

Note 2: Airbus Service Bulletin A310–27–2092, Revision 02, dated April 11, 2005, refers to Lucas Liebherr Service Bulletin 551A–27–624, Revision 1, dated August 18, 2000, as an additional source of service information for accomplishing the inspections.

Note 3: Airbus Service Bulletin A310–27–2092, Revision 02, refers to Airbus Service Bulletin A310–27–2095, dated March 29, 2000, as a source of service information for replacing the flap transmission shafts.

Note 4: Airbus Service Bulletin A310–27–2095 refers to Lucas Liebherr Service Bulletin 551A–27–M551–05, dated January 12, 2000, as an additional source of service information for replacing the flap transmission shafts.

Repetitive Inspections

(g) Repeat the inspection required by paragraph (f) of this AD at the applicable times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD. Doing an inspection in accordance with paragraph (o) or (p) of this AD terminates the requirements of this paragraph.

(1) Before further flight after any occurrence of jamming of the flap transmission system.

(2) At intervals not to exceed 2,000 flight hours after each flap asymmetry protection test performed in accordance with Airbus A310 MPD Task 275600–01–1.

(3) At intervals not to exceed 8,000 flight cycles after each flap asymmetry protection test performed in accordance with Airbus A310 MPD Task 275600–02–1.

Optional Terminating Action

(h) Replacing any flap transmission shaft with a new or reconditioned transmission shaft in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–27–2095, dated March 29, 2000, ends the inspections required by paragraphs (f) and (g) of this AD for that transmission shaft only.

Actions Performed Using Previously Issued Service Information

(i) Actions performed in accordance with Airbus Service Bulletin A310–27–2092, dated April 9, 1999; or Revision 01, dated December 11, 2001; are considered acceptable for compliance with the corresponding requirements of paragraphs (f) and (g) of this AD.

No Reporting

(j) Although Airbus Service Bulletin A310–27–2092, Revision 02, dated April 11, 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Restatement of Requirements of AD 2006–15–10

Service Bulletin References

(k) Unless otherwise specified in this AD, the term ''service bulletin,'' as used in paragraphs (l), (m), and (n) of this AD, means the applicable required service bulletin identified in Table 1 of this AD. The service bulletins refer to Goodrich Actuation Systems Service Bulletin 47142–27–11, Revision 3, dated April 25, 2005, as an additional source of service information for the required actions.

TABLE 1.—SERVICE BULLETINS

Required Airbus Service Bulletin	Approved Airbus Service Bulletin version for actions done before the effective date of this AD	Airbus airplane model
A300–27–6044, Revision 04, dated September 10, 2001.	A300–27–6044, Revision 02, dated August 26, 2000; or Revision 03, dated June 28, 2001.	A300 B4–601, B4–603, B4–620, and B4–622. A300 B4–605R and B4–622R. A300 F4–605R and F4–622R. A300 C4–605R Variant F.
A310–27–2089, Revision 02, dated June 28, 2001.	A310–27–2089, Revision 01, dated August 25, 2000.	A310–203, –204, –221, and –222. A310–304, –322, –324, and –325.

Inspection

(l) At the applicable time specified in paragraph (l)(1) or (l)(2) of this AD, do a detailed inspection of specified components of the THSA in accordance with paragraph 1.E.(2)(a) and the Accomplishment Instructions of the applicable service bulletin. Repair any discrepancy before further flight in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent). TRW Aeronautical Systems/Lucas Aerospace Component Maintenance Manual 27–44–13, dated September 14, 2001, is one acceptable method for the repair. Doing an inspection in accordance with paragraph (o) or (p) of this AD terminates the requirements of this paragraph.

(1) If the flight hours accumulated on the THSA can be positively determined: Inspect at the earlier of:

(i) Before the accumulation of 47,000 total flight hours on the THSA, or within 600 flight hours after August 29, 2006 (the effective date of AD 2006–15–10), whichever occurs later.

(ii) Within 25 years since the THSA was new or within 600 flight hours after August 29, 2006, whichever occurs later.

(2) If the flight hours accumulated on the THSA cannot be positively determined: Inspect before the accumulation of 47,000 total flight hours on the airplane, or within 600 flight hours after August 29, 2006, whichever occurs later.

Note 5: 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 mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Follow-on Repetitive Tasks

(m) After the inspection required by paragraph (l) of this AD: Do the repetitive tasks in accordance with the Accomplishment Instructions and at the times specified in paragraph 1.E.(2)(b) of the service bulletin, as applicable, except as provided by paragraph (n) of this AD. The repetitive tasks are valid only until the THSA operational life exceeds 65,000 flight hours, 40,000 flight cycles, or 25 years, whichever occurs first. Before the THSA is operated beyond these extended life goals, it must be replaced with a new THSA, except as required by paragraph (n) of this AD. Doing an inspection in accordance with paragraph (o) or (p) of this AD terminates the requirements of this paragraph.

THSA Replacement

(n) For any THSA, whether discrepant or not, that is replaced with a new THSA: Within 47,000 flight hours or 25 years, whichever occurs first, after the THSA is replaced, do the applicable tasks specified in paragraph 1.E.(2)(a) and the Accomplishment Instructions of the applicable service bulletin. Thereafter repeat the tasks within the repetitive intervals specified in paragraph 1.E.(2)(b) of the applicable service bulletin. Doing the corresponding tasks in accordance with paragraph (o) or (p) of this AD terminates the requirements of this paragraph.

New Requirements of This AD

Revise Airworthiness Limitations Section (ALS) to Incorporate Limitations and Maintenance Tasks for Aging Systems Maintenance

(o) Within 3 months after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate Airbus A310 ALS Part 4—Aging Systems Maintenance, Revision 01, dated December 21, 2006; and A300–600 ALS Part 4—Aging Systems Maintenance, Revision 01, dated December 21, 2006; as applicable. For all tasks identified in Airbus A310 ALS Part 4—Aging Systems Maintenance, Revision 01; and A300–600 ALS Part 4—Aging Systems Maintenance, Revision 01; the initial compliance times start from the effective date of this AD, except as provided by paragraph (p) of this AD. The repetitive inspections must be accomplished thereafter at the interval specified in Airbus A310 ALS Part 4—Aging Systems Maintenance, Revision 01; and A300–600 ALS Part 4—Aging Systems Maintenance, Revision 01.

(p) For airplanes on which any life limitation/maintenance task has been complied with in accordance with the requirements of AD 2006–10–11 or AD 2006–15–10, the last accomplishment of each limitation/task must be retained as a starting point for the accomplishment of each corresponding limitation/task interval now introduced in Airbus A310 ALS Part 4—Aging Systems Maintenance, Revision 01, dated December 21, 2006; and A300–600 ALS Part 4—Aging Systems Maintenance, Revision 01, dated December 21, 2006; as applicable.

(q) Except as provided by paragraph (r) of this AD: After accomplishing the actions specified in paragraphs (o) and (p) of this AD, no alternative inspection, inspection intervals, or limitations may be used.

Alternative Methods of Compliance (AMOCs)

(r)(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 2006–10–11 are not approved as AMOCs with this AD.

(4) AMOCs approved previously in accordance with AD 2006–15–10 are not approved as AMOCs with this AD.

Related Information

(s) EASA airworthiness directive 2007–0092, dated April 10, 2007, also addresses the subject of this AD.

Issued in Renton, Washington, on January 3, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–380 Filed 1–11–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0014; Directorate Identifier 2007–NM–249–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 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 certain Airbus Model A318, A319, A320, and A321 airplanes. The existing AD currently requires repetitive inspections for cracking in the forward lug of the support rib 5 fitting of both main landing gear (MLG), and repair if necessary. The existing AD also provides optional terminating actions for certain airplanes, as well as other optional methods for complying with the inspection requirements of the existing AD. This proposed AD would continue to require repetitive inspections for cracking in the forward lug of the support rib 5 fitting of the left and right MLG at new repetitive intervals in accordance with new service information, and repair or replacement of any cracked MLG fitting if necessary. This proposed AD would also require modification of the rib bushings of the left and right MLG, which would end the repetitive inspections. This proposed AD results from cracks found in the forward lug of the MLG support rib 5 fitting. We are proposing this AD to prevent cracking in the forward lug of the MLG, which could result in failure of the lug and consequent collapse of the MLG during takeoff or landing.

DATES: We must receive comments on this proposed AD by February 13, 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 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–2008–0014; Directorate Identifier 2007–NM–249–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 May 15, 2006, we issued AD 2006–11–04, amendment 39–14608 (71 FR 29578, May 23, 2006), for certain Airbus Model A318, A319, A320, and A321 airplanes. AD 2006–11–04 requires repetitive detailed inspections for cracking in the forward lug of the support rib 5 fitting of both main landing gear (MLG), and repair if necessary. AD 2006–11–04 also provides optional terminating actions for certain airplanes, as well as other optional methods for complying with the inspection requirements of the existing AD. That AD resulted from a new crack that was found in the forward lug of the MLG support rib 5 fitting. We issued that AD to detect and correct cracking in the forward lug of the MLG, which could result in failure of the lug and consequent collapse of the MLG during takeoff or landing.

Actions Since Existing AD Was Issued

Since we issued AD 2006–11–04, the European Aviation Safety Agency (EASA), which is the technical agent for the Member States of the European Union, notified us that the repetitive inspection intervals must be adjusted and that the optional terminating action, which would end the repetitive inspections, must be mandated for all airplanes. In the preamble to AD 2006–11–04, we indicated that the actions required by that AD were considered ''interim action,'' and that we were considering further rulemaking to require the modification of the lugs of the support rib 5 fitting of both MLG, which would terminate the repetitive inspections required by AD 2006–11–04. We have now determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Relevant Service Information

Airbus has issued Service Bulletin A320–57–1138, Revision 01, dated October 27, 2006. The service bulletin describes procedures for (1) doing repetitive visual inspections or repetitive ultrasonic inspections for cracking in the forward lug of the support rib 5 fitting of the left and right MLG, (2) doing repetitive visual inspections for cracking in the forward lug of the support rib 5 fitting if any cracking is found during an ultrasonic inspection, and (3) contacting the manufacturer for instructions if any cracking is found during a visual inspection. The service bulletin also specifies that accomplishing Airbus Service Bulletin A320–57–1118 eliminates the need for the repetitive inspections.

Airbus has also issued Service Bulletin A320–57–1118, Revision 03, dated April 23, 2007. The service bulletin describes procedures for modifying the rib bushings of the left and right MLG. The modification includes removing the existing bushings, doing a visual inspection for corrosion and damage to the bores and spotfaces, repairing any corrosion or damage found during the detailed inspection, and installing new improved bushings and applying a certain protective sealant to the bores and spotfaces of the lugs for the pintle-pin bushings of gear rib 5. Accomplishing the modification eliminates the need for the repetitive inspections specified in Airbus Service Bulletin A320–57–1138.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2007–0213, dated August 7, 2007, to ensure the continued airworthiness of these airplanes in the European Union.

FAA's Determination and Requirements of the Proposed AD

These airplanes are manufactured in France 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. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA'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 2006–11–04 and would retain the requirements of the existing AD, until the new inspections have been initiated. This proposed AD would also require accomplishing the actions specified in service information described previously, except as discussed under ''Differences between Proposed AD and Service Bulletin.''

Differences Between Proposed AD and Service Bulletin

Although EASA airworthiness directive 2007–0213 specifies repeating the inspections at the intervals defined in Airbus Service Bulletin A320–57–1138, the intent is to require the repetitive inspections at those intervals, or before further flight after a hard landing, whichever is first. We have coordinated this difference with the EASA.

EASA airworthiness directive 2007–0213 and Airbus Service Bulletin A320–57–1138 permit further flight if cracking is found during the ultrasonic inspection but is not detected by a visual inspection. This proposed AD, however, would require repair or replacement of any cracked MLG fitting before further flight. We have determined that because of the safety implications and consequences associated with cracking in the subject area, the MLG fitting must be repaired or replaced before further flight regardless of how the crack is detected. We note that cracking found during the ultrasonic inspection may be repaired with oversized bushings, whereas cracking detected during the visual inspection would require extensive repair or replacement of the MLG fitting.

Airbus Service Bulletin A320–57–1138 specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method approved by the FAA or the EASA (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by the FAA or the EASA would be acceptable for compliance with this proposed AD.

Costs of Compliance

This proposed AD would affect about 466 airplanes of U.S. registry.

The actions that are required by AD 2006–11–04 and retained in this proposed AD 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 currently required actions is $160 per airplane, per inspection cycle.

The new proposed inspections would take between 3 and 4 work hours per airplane, depending on the type of inspection accomplished, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the new inspections specified in this proposed AD for U.S. operators is between $111,840 and $149,120, or between $240 and $320 per airplane, per inspection cycle.

The new proposed modification would take about 73 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost $3,850 per airplane. Based on these figures, the estimated cost of the new modification specified in this proposed AD for U.S. operators is $4,515,540, or $9,690 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 removing amendment 39–14608 (71 FR 29578, May 23, 2006) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2008–0014; Directorate Identifier 2007–NM–249–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 13, 2008.

Affected ADs

(b) This AD supersedes AD 2006–11–04.

Applicability

(c) This AD applies to Airbus Model A318, A319, A320, and A321 airplanes, certificated in any category, except airplanes on which

Airbus Modification 32025 has been accomplished in production.

Unsafe Condition

(d) This AD results from cracks found in the forward lug of the main landing gear (MLG) support rib 5 fitting. We are issuing this AD to prevent cracking in the forward lug of the MLG, which could result in failure of the lug and consequent collapse of the MLG during takeoff or landing.

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.

Restatement of Certain Requirements of AD 2006–11–04

Repetitive Detailed Inspections

(f) Within 8 days after June 7, 2006 (the effective date of AD 2006–11–04), or before further flight after a hard landing, whichever is first: Perform a detailed inspection for cracking in the forward lug of the support rib 5 fitting of the left- and right-hand MLG, and, if any crack is found, replace the MLG fitting with a new fitting before further flight, in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent). Accomplishing the actions specified in the Airbus A318/A319/A320/A321 Nondestructive Testing Manual, Chapter 51–90–00, revision dated February 1, 2003, is one approved method for performing the detailed inspection. Repeat the inspection thereafter at intervals not to exceed 8 days, or before further flight after a hard landing, whichever is first. As of the effective date of this AD, the repetitive inspections required by paragraph (i) of this AD must be accomplished in lieu of the repetitive inspections required by this paragraph.

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 mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Optional Inspection Method

(g) Performing an ultrasonic inspection for cracking in the forward lug of the support rib 5 fitting of the left- and right-hand MLG in accordance with a method approved by the Manager, International Branch, ANM–116; or the EASA (or its delegated agent); is an acceptable alternative method of compliance for the initial and repetitive inspections required by paragraph (f) of this AD. Doing the actions specified in the A318/A319/A320/A321 Nondestructive Testing Manual, Chapter 57–29–03, revision dated February 1, 2005 (for Model A318, A319, and A320 airplanes), or Chapter 57–29–04, revision dated May 1, 2005 (for Model A321 airplanes), as applicable, is one approved method for performing the ultrasonic inspection.

Optional Terminating Action

(h) For Model A319, A320, and A321 airplanes: Repair of the forward lugs of the support rib 5 fitting of the left- and right-hand MLG in accordance with a method approved by the Manager, International Branch, ANM–116; or the EASA (or its delegated agent); constitutes terminating action for the requirements of this AD. Doing the repair in accordance with Airbus A319 Structural Repair Manual (SRM), Chapter 5.C., 57–26–13, revision dated November 1, 2004; Airbus A320 SRM, Chapter 5.D., 57–26–13, revision dated November 1, 2004; or Airbus A321 SRM, Chapter 5.D., 57–26–13, revision dated February 1, 2005; as applicable; is one approved method.

New Requirements of This AD

New Repetitive Inspections

(i) At the applicable time specified in Table 1 of this AD, or before further flight after a hard landing, whichever is first: Do a visual inspection or ultrasonic inspection for cracking in the forward lug of the support rib 5 fitting of the left and right MLG, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1138, Revision 01, dated October 27, 2006. Repeat the inspection thereafter at the applicable interval specified in Table 1 of this AD or before further flight after a hard landing, whichever is first, until the modification required by paragraph (k) of this AD has been accomplished. Accomplishing the initial inspection terminates the requirements of paragraph (f) of this AD.

TABLE 1.—COMPLIANCE TIMES

Airplanes	Initial inspection	Repetitive interval
Model A318, A319, and A320 airplanes.	If the most recent inspection is a detailed inspection done in accordance with paragraph (f) of this AD, inspect within 150 flight cycles after the most recent detailed inspection.	Within 150 flight cycles after a visual inspection.
	If the most recent inspection is an ultrasonic inspection done in accordance with paragraph (g) of this AD, inspect within 940 flight cycles after the most recent ultrasonic inspection.	Within 940 flight cycles after an ultrasonic inspection.
Model A321 airplanes	If the most recent inspection is a detailed inspection done in accordance with paragraph (f) of this AD, inspect within 100 flight cycles after the most recent detailed inspection.	Within 100 flight cycles after a visual inspection.
	If the most recent inspection is an ultrasonic inspection done in accordance with paragraph (g) of this AD, inspect within 630 flight cycles after the most recent ultrasonic inspection.	Within 630 flight cycles after an ultrasonic inspection.

Corrective Action

(j) If any cracking is found during any inspection required by paragraph (i) of this AD: Before further flight, repair or replace the cracked MLG fitting using a method approved by either the Manager, International Branch, ANM–116, or the EASA (or its delegated agent).

Terminating Action

(k) Within 60 months after the effective date of this AD, modify the rib bushings of the left and right MLG, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–57–1118, Revision 03, dated April 23, 2007. Accomplishing the modification terminates the requirements of this AD.

Credit for Actions Done According to Previous Issue of Service Bulletin

(l) For Model A319, A320, and A321 airplanes, modifying the lugs of the support rib 5 fitting of the left and right MLG is acceptable for compliance with the requirements of paragraph (k) of this AD if done before the effective date of this AD in accordance with one of the following service bulletins: Airbus Service Bulletin A320–57–1118, dated September 5, 2002; Revision 01, dated August 28, 2003; or Revision 02, dated August 2, 2006.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, International Branch, ANM–116, 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 2006–11–04 are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(n) EASA airworthiness directive 2007–0213, dated August 7, 2007, also addresses the subject of this AD.

Issued in Renton, Washington, on December 26, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–383 Filed 1–11–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0013; Directorate Identifier 2007–NM–230–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–200 Series Airplanes Equipped With an Auxiliary Fuel Tank System Installed in Accordance With Supplemental Type Certificate SA1350NM

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 727–200 series airplanes. This proposed AD would require deactivation of auxiliary fuel tank systems installed in accordance with Supplemental Type Certificate (STC) SA1350NM. This proposed AD results from fuel tank system reviews conducted by the manufacturer that identified potential unsafe conditions for which the manufacturer has not provided corrective actions. We are proposing this AD to prevent 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.

DATES: We must receive comments on this proposed AD by February 28, 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 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: Jeff Janusz, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4148; fax (316) 946–4107.

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–2008–0013; Directorate Identifier 2007–NM–230–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

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'' (67 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) design approval) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to design approval 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 another 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.

Supplemental Type Certificate (STC) SA1350NM for DTAA, Inc., Auxiliary Fuel Tank System

The auxiliary fuel tank system STC consists of two fuel tank systems, a forward tank system consisting of 5 cells and an aft tank system consisting of 3 cells. Each cell or individual tank is of a double wall cylindrical design. All auxiliary fuel tank system tanks are emptied and vented into the airplane center wing tank using bleed air pressure supplied from the No. 1 (left hand) engine. All auxiliary fuel tank system tanks use some type of electrical fuel quantity indication system (FQIS), flight deck control and annunciation panels, bleed air pressure regulators, vents, bleed air, and transfer valves, pressure switches, float level switches, and associated electrical wiring connections and electrical bonding methods.

FAA's Findings

During the SFAR 88 safety assessment, it was determined that the auxiliary fuel tank system FQIS requires wire separation or other means to preclude any adjacent high power wires from shorting or inducing high electrical energy levels into the auxiliary fuel tank system or airplane fuel tank system. Additionally, the auxiliary fuel tank system fuel transfer valves were not previously tested or shown to be intrinsically safe from producing electrical arcing or explosion hazards while in the presence of fuel vapors; therefore, re-certification or relocation of these valves are mandated. Finally, STC SA1350NM has been categorized by the FAA as being a high flammability exposure installation, based on the internal fuselage location of the auxiliary fuel tank system. A means to insure low flammability exposure or to mitigate the effects of high flammability exposure time is mandated.

DTAA, Inc., has not provided the service information required under SFAR 88 that would correct these conditions; therefore, we must mandate the deactivation of all DTAA, Inc., auxiliary fuel tank systems installed in accordance with STC SA1350NM.

If operators do not wish to deactivate their auxiliary fuel tanks, we will consider requests for alternative methods of compliance (AMOCs).

Once an operator has deactivated the tank as required by this AD, the operator might wish to remove the tank. This would require a separate design approval, if an approved tank removal procedure does not exist.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing this AD, which would require deactivation to prevent usage of the auxiliary fuel tank system installed in accordance with STC SA1350NM.

Explanation of Compliance Time

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for coordinated implementation of these regulations and this proposed AD, we are using this same compliance date in this proposed AD.

Costs of Compliance

The following table provides the estimated costs for the 25 U.S.-registered airplanes to comply with this proposed AD. Based on these figures, the estimated costs for U.S. operators could be as high as $162,000 to prepare and report the deactivation procedures, and $90,000 to deactivate the tank.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Individual cost
Report	1	$80	None	$80
Preparation of tank deactivation procedure	80	80	None	6,400
Physical tank deactivation	30	80	1,200	3,600

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):

DTAA, Inc.: Docket No. FAA–2008–0013; Directorate Identifier 2007–NM–230–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 727–200 series airplanes, certificated in any category and equipped with an auxiliary fuel tank system installed in accordance with Supplemental Type Certificate SA1350NM.

Unsafe Condition

(d) This AD results from fuel tank system reviews conducted by the manufacturer. We are issuing this AD to prevent 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.

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.

Report

(f) Within 45 days after the effective date of this AD, submit a report to the Manager, Wichita Aircraft Certification Office (ACO), FAA. The report must include the information listed in paragraphs (f)(1) and (f)(2) of 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 contained in this AD, and assigned OMB Control Number 2120–0056.

(1) The airplane registration and serial number.

(2) The usage frequency in terms of total number of flights per year and total number of flights per year for which the auxiliary fuel tank system is used.

Prevent Usage of Auxiliary Fuel Tank

(g) On or before December 16, 2008, deactivate the auxiliary fuel tank system, in accordance with a deactivation procedure approved by the Manager of the Wichita ACO. Any auxiliary fuel tank system component that remains on the airplane must be secured and must have no effect on the continued operational safety and airworthiness of the airplane. Deactivation may not result in the need for additional Instructions for Continued Airworthiness (ICA).

Note 1: Appendix A of this AD provides criteria that must be included in the deactivation procedure. The proposed deactivation procedures should be submitted to the Wichita ACO as soon as possible to ensure timely review and approval, prior to implementation.

Note 2: For technical information, contact Steve Forness, DTAA, Inc., 101 Deer Meadow Court, St. Charles, Missouri 63304, (636) 928–9606, fax (314) 749–7513.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Wichita 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.

Appendix A—Deactivation Criteria

The auxiliary fuel tank system deactivation procedure required by paragraph (g) of this AD should address the following actions.

(1) Permanently drain the auxiliary fuel tank system tanks, and clear them of fuel vapors to eliminate the possibility of out-gassing of fuel vapors from the emptied auxiliary tank.

(2) Disconnect all auxiliary fuel tank system electrical connections from the fuel quantity indication system (FQIS), float, pressure and transfer valves and switches, and all other electrical connections required for auxiliary fuel tank system operation, and stow them at the auxiliary fuel tank interface.

(3) Disconnect all auxiliary fuel tank system bleed-air connections, cap them at the bleed air source, and secure them.

(4) Disconnect all auxiliary fuel tank system fuel supply and fuel vent plumbing interfaces with airplane original equipment manufacturer (OEM) fuel tanks, cap them at the airplane tank side, and secure them. All disconnected auxiliary fuel tank system vent systems must not alter the OEM fuel tank vent system configuration or performance. All empty auxiliary fuel tank system tanks must be vented to eliminate the possibility of structural deformation during cabin decompression. The configuration must not permit the introduction of fuel vapor into any compartments of the airplane.

(5) Pull and collar all circuit breakers used to operate the auxiliary fuel tank system.

(6) Revise the weight and balance document, if required, and obtain FAA approval.

(7) Amend the applicable sections of the applicable Airplane Flight Manual (AFM) to indicate that the auxiliary fuel tank system is deactivated. Remove auxiliary fuel tank system operating procedures to ensure that only the OEM fuel system operational procedures are contained in the AFM. Amend the Limitations Section of the AFM to indicate that the AFM Supplement for the STC is not in effect. Place a placard in the flight deck indicating that the auxiliary fuel tank system is deactivated. The AFM revisions specified in this paragraph may be accomplished by inserting a copy of this AD into the AFM.

(8) Amend the applicable sections of the applicable airplane maintenance manual to remove auxiliary fuel tank system maintenance procedures.

(9) After the auxiliary fuel tank system is deactivated, accomplish procedures such as leak checks, pressure checks, and functional checks deemed necessary before returning the airplane to service. These procedures must include verification that the basic airplane OEM FQIS, fuel distribution, and fuel venting systems function properly and have not been adversely affected by deactivation of the auxiliary fuel tank system.

(10) Include with the proposed deactivation procedures any relevant information or additional steps that are deemed necessary by the operator to comply with the deactivation of the auxiliary fuel tank system and return of the airplane to service.

Issued in Renton, Washington, on December 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–384 Filed 1–11–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0015; Directorate Identifier 2007–NM–328–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, and MD–10–10F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, and MD–10–10F airplanes. This proposed AD would require repetitive inspections for the presence of stray nickel or chrome plating deposits on the air filler valve bore of certain main landing gear (MLG) shock strut cylinders, and if necessary, related investigative and corrective actions. Doing the corrective action would terminate the repetitive inspections. This proposed AD results from a report of a left MLG collapse

during landing rollout. We are proposing this AD to detect and correct stray nickel and chrome plating deposits, corrosion, and cracking of the air filler valve bore on the MLG cylinder, which could result in landing gear failure, significant damage to the airplane, and injury to personnel.

DATES: We must receive comments on this proposed AD by February 28, 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, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

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: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

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–2008–0015; Directorate Identifier 2007–NM–328–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 received a report that one McDonnell Douglas Model MD–10–10 airplane experienced a left main landing gear (MLG) collapse during landing rollout, which was caused by combined fatigue and stress corrosion cracking failure of the MLG shock strut cylinder assembly. Metallurgical analysis has determined that the origin of the fracture was located in the bore of the air filler valve port located on the aft side of the MLG cylinder. The primary crack initiation point was in an area of stray nickel plating deposits on the bore. A secondary origination of the crack was initiated from a shallow corrosion pit located at the opposite side of the bore to the primary initiation point. Stray nickel or chrome plating deposits, corrosion, or cracking in the air filler valve bore of the MLG cylinder, if not corrected, could result in landing gear failure, significant damage to the airplane, and injury to personnel.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin DC10–32A259, dated October 30, 2007. The service bulletin describes procedures for repetitive video probe inspections to detect the presence of stray nickel or chrome plating deposits on the air filler valve bore of certain main landing gear (MLG) shock strut cylinders, and if necessary, related investigative and corrective actions. The related investigative actions include a video probe inspection for corrosion of the air filler valve bore in the MLG shock strut cylinder and an eddy current inspection for cracking of the air filler valve bore. The corrective actions include repair of the air filler valve bore of the MLG shock strut cylinder, removal of corrosion, and replacement of the MLG cylinder. The service bulletin specifies that doing the repair or replacement ends the repetitive inspections for that MLG shock strut cylinder only.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 75 airplanes of U.S. registry. 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	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspection	4	$80	$320, per inspection cycle	75	$24,000, 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 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.

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, 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:

McDonnell Douglas: Docket No. FAA–2008–0015; Directorate Identifier 2007–NM–328–AD.

Comments Due Date

(a) We must receive comments by February 28, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, and MD–10–10F airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin DC10–32A259, dated October 30, 2007.

Unsafe Condition

(d) This AD results from a report of a left main landing gear (MLG) collapse during landing rollout. We are issuing this AD to detect and correct stray nickel and chrome plating deposits, corrosion, and cracking of the air filler valve bore on the MLG cylinder, which could result in landing gear failure, significant damage to the airplane, and injury to personnel.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Inspections and Corrective Actions

(f) At the applicable time specified in paragraph (f)(1), (f)(2), or (f)(3) of this AD, do a video probe inspection for the presence of stray nickel or chrome plating deposits on the air filler valve bore of the MLG shock strut cylinders, and before further flight, do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–32A259, dated October 30, 2007. Repeat the video probe inspection thereafter at intervals not to exceed 2,400 flight cycles or 20 months, whichever occurs first. Accomplishment of the repair specified in Part 2 of the Accomplishment Instructions of the service bulletin or the replacement specified in Part 3 of the Accomplishment Instructions of the service bulletin terminates the repetitive inspections for that MLG shock strut cylinder.

(1) For passenger airplanes: Within 24 months after the effective date of this AD.

(2) For freighter airplanes with MLG cylinders that have accumulated fewer than 7,200 flight cycles in a freighter configuration as of the effective date of this AD: Within 24 months after the effective date of this AD.

(3) For freighter airplanes with MLG cylinders that have accumulated 7,200 flight cycles or more in a freighter configuration as of the effective date of this AD: Within 6 months after the effective date of this AD.

Parts Installation

(g) As of the effective date of this AD, no person may install a MLG shock strut cylinder assembly, part number ARG7002–1, –501, –503, or –505, on any airplane, unless the air filler valve bore hole has been oversized and closing action has been accomplished in accordance with Boeing Alert Service Bulletin DC10–32A259, dated October 30, 2007, and the MLG shock strut cylinder assembly has been permanently identified with part number SB10320259–3 adjacent to the existing ARG7002 part number.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, ATTN: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested using 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 26, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–385 Filed 1–11–08; 8:45 am]

BILLING CODE 4910–13–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

RIN 3014–AA22

Emergency Transportable Housing Advisory Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to make recommendations for possible revisions to the Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines to include provisions for emergency transportable housing. This notice announces the dates, time, and location of the next committee meeting.

DATES: The meeting is scheduled for January 24 and 25, 2008 from 10 a.m. to 5 p.m. on January 24 and from 9 a.m. to 5 p.m. on January 25.

ADDRESSES: The meeting will be held at the Access Board's offices, 1331 F Street, NW., Suite 1000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0020 (Voice); (202) 272–0082 (TTY). These are not toll-free numbers. E-mail address: *mazz@access-board.gov*.

SUPPLEMENTARY INFORMATION: On August 23, 2007, the Architectural and Transportation Barriers Compliance

Board (Access Board) established an advisory committee to make recommendations for possible revisions to the Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines to include provisions for emergency transportable housing. (72 FR 48251; August 23, 2007). The next meeting of the committee will take place on January 24 and 25, 2008. The preliminary meeting agenda, along with information about the committee, is available at the Access Board's Web site (*http://www.access-board.gov/eth/index.htm*).

Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the committee on issues of interest to them during public comment periods scheduled on each day of the meeting. Additionally, all interested persons will have the opportunity to comment when proposed rules regarding emergency transportable housing accessibility are issued in the **Federal Register** by the Access Board.

The meeting site is accessible to individuals with disabilities. Individuals who require sign language interpreters, real-time captioning, or materials in alternate formats should contact Marsha Mazz by January 17. Also, persons wishing to provide handouts or other written information to the committee are requested to provide electronic format to Marsha Mazz preferably via e-mail so that alternate formats such as large print can be distributed to committee members. Persons attending the meeting are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 08–92 Filed 1–11–08; 8:45 am]

BILLING CODE 8150–01–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1195

RIN 3014–AA22

Passenger Vessel Emergency Alarms Advisory Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to make recommendations on issues related to the effectiveness of emergency alarm systems for individuals with hearing loss or deafness on passenger vessels. This notice announces the dates, time, and location of the next committee meeting.

DATES: The meeting is scheduled for February 12 and 13, 2008 from 9 a.m. to 5 p.m. on both days.

ADDRESSES: The meeting will be held at the Access Board's offices, 1331 F Street, NW., Suite 100, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0012 (Voice); (202) 272–0082 (TTY). These are not toll-free numbers. E-mail address: *pvag@access-board.gov*.

SUPPLEMENTARY INFORMATION: On August 13, 2007, the Architectural and Transportation Barriers Compliance Board (Access Board) established an advisory committee to make recommendations on issues related to the effectiveness of emergency alarm systems for individuals with hearing loss or deafness on passenger vessels. (72 FR 45200; August 13, 2007). The next meeting of the committee will take place on February 12 and 13, 2008. The preliminary meeting agenda, along with information about the committee, is available at the Access Board's Web site (*http://www.access-board.gov/pvaac/alarms/*).

Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the committee on issues of interest to them during public comment periods scheduled on each day of the meeting. Additionally, all interested persons will have the opportunity to comment when proposed rules regarding passenger vessel accessibility are issued in the **Federal Register** by the Access Board.

The meeting site is accessible to individuals with disabilities. Sign language interpreters, an assistive listening system, and computer assisted real-time transcription (CART) will be provided. Persons attending the meeting are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 08–103 Filed 1–11–08; 8:45 am]

BILLING CODE 8150–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–1010; FRL–8515–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revised Motor Vehicle Emission Budgets for the Charleston 8-Hour Ozone Maintenance Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of amending the 8-hour ozone maintenance plan for the Charleston area. This revision amends the maintenance plans' 2009 and 2018 motor vehicle emissions budgets (MVEBs) by reallocating a portion of the plans' safety margins which results in an increase in the MVEBs. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives 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 rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 13, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–1010 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *febbo.carol@epa.gov*

C. Mail: EPA–R03–OAR–2007–1010, Carol Febbo, Chief, Energy, Radiation and Indoor Environment Branch, Mailcode 3AP23, U.S. Environmental

Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. 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–R03–OAR–2007–1010. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, WV 25304.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at *kotsch.martin@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: December 27, 2007.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E8–287 Filed 1–11–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–1149; FRL–8515–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Fredericksburg and Shenandoah National Park 8-Hour Ozone Areas Movement from the Nonattainment Area List to the Maintenance Area List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of establishing the Fredericksburg 8-Hour Ozone Nonattainment Area (Spotsylvania County, Stafford County, and Fredericksburg City) and the Shenandoah National Park 8-Hour Ozone Nonattainment Area (portions of the park located in Page and Madison Counties) movement from the nonattainment area list to the maintenance area list. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives 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 rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 13, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–1149 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2007–1149, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2007–1149. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the

www.regulations.gov index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Melissa Linden, (215) 814–2096, or by e-mail at *linden.melissa@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Approval of Virginia's Revision to move the Fredericksburg and the Shenandoah National Park 8–Hour Ozone Areas from the list of Nonattainment Areas to the list of Maintenance Areas that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 27, 2007.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E8–290 Filed 1–11–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–5038; MB Docket No. 07–280; RM–11379]

Radio Broadcasting Services; Linden, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by George S. Flinn, Jr., requesting the allotment of Channel 267A at Linden, Tennessee to prevent removal of Linden's first potential local service. The reference coordinates for Channel 267A at Linden, Tennessee, are 35–39–45 NL and 87–44–25 WL.

DATES: Comments must be filed on or before February 11, 2008, and reply comments on or before February 28, 2008.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Stephen C. Simpson, Esq., c/o George S. Flinn, Jr., Law Office of Stephen C. Simpson, 1250 Connecticut Avenue, NW., Suite 200, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 07–280, adopted December 19, 2007, and released December 21, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via e-mail *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–458 Filed 1–11–08; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 73, No. 9

Monday, January 14, 2008

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

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Perceptions of Risk, Trust, Responsibility, and Management Preferences Among Fire-Prone Communities in the Western United States

AGENCY: Forest Service, USDA.

ACTION: Notice; Request for Comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revision of a currently approved information collection, Perceptions of Risk, Trust, Responsibility, and Management Preferences among Fire-Prone Communities in the Western United States.

DATES: Comments must be received in writing on or before March 14, 2008 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Patricia L. Winter, Pacific Southwest Research Station, Forest Service, U.S. Department of Agriculture, 4955 Canyon Crest Drive, Riverside, CA 92507.

Comments also may be submitted via facsimile to 951–680–1501 or by e-mail to: *pwinter@fs.fed.us.*

The public may inspect comments received at Building One Reception, 4955 Canyon Crest Drive, Riverside, CA 92507, during normal business hours. Visitors are encouraged to call ahead to (951) 680–1500 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Patricia L. Winter, Pacific Southwest Research Station, Forest Service, U.S. Department of Agriculture, 951–680–1557. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Perceptions of Risk, Trust, Responsibility, and Management Preferences among Fire-Prone Communities in the Western United States.

OMB Number: 0596–0186.

Expiration Date of Current Approval: July 31, 2008.

Type of Request: Extension with revision of a currently approved collection.

Abstract: The purpose of this survey is to determine the perceptions of risk, trust, responsibility, and management preferences among individuals residing in fire-prone communities in the Western United States.

Forest Service and university researchers will contact community residents within or adjacent to national forests in the Western United States. Through those contacts, researchers will evaluate concerns about fire and fire risk; knowledge about fire; values focused on fire management; trust, objectives, and alternatives for fire management; personal experiences with fire; stressors associated with fire and fire risk; responsibility and accomplishments for fire management; sources of concern about fire; future orientation; and socio-demographics.

The results will help researchers improve the ability to provide information to natural resource managers on public perceptions of fire and fire management. To gather the information, residents within, or adjacent to, national forests in the Western United States will be contacted through mailed or e-mail correspondence or by telephone inviting their participation in a focus group study. Willing or interested parties will contact the researcher and be scheduled into sessions in their community. Those agreeing to participate will be involved in a focus group discussion and complete a self-administered survey.

A Forest Service researcher and analyst/technicians will collect and analyze the information with the assistance of a cooperating university researcher. Both researchers are experts in applied social psychology and survey research.

Participants will first complete a questionnaire focused on the individual's concern about fire, knowledge about fire, values similarity with the Forest Service, trust, objectives for fire management, personal experience with fire, stressors of fire and fire risk, responsibility for risk reduction, accomplishment of risk reduction, sources of concern about fire, future orientation, and sociodemographics. Participants (age 18 or older) residing in the selected communities are then invited via mail, e-mail, or telephone to participate in a discussion on the following topics: objectives, values, and concerns in fire management; alternatives for accomplishing objectives; values/goals and trust; and information needs and interests. When possible, multiple sessions will be held in each community to accommodate as many participants as are interested. Responses will be voluntary and anonymous.

Responses will be used to evaluate the values linked to fire and fire management among forest community residents, personal experiences with fire and how participants have addressed fire risk, perceived responsibility and accomplishments in addressing fire risk, and personal characteristics that might influence these responses. The data collected will assist researchers in determining public perception and expectations regarding fire management and risk, as well as providing information on how residents address these issues. Such data is valuable to forest resource managers, who use the information when selecting long and short-term fire management strategies, and in developing public information strategies on fire and fire management.

Without this information, managers will have to rely on the scant information otherwise available on current and changing public views regarding fire and fire management, and the anecdotal information collected through direct experiences with the public regarding impacts of fire and fire risk. The intent is to share the collected data with other researchers studying fire management, and other natural resource management values and objectives.

Estimate of Annual Burden: 2.3 hours.

Type of Respondents: Respondents are community residents in various locations within or adjacent to national forests in the Western United States.

Estimated Annual Number of Respondents: 200.

Estimated Annual Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 460.

Comment is Invited:

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: January 3, 2008.

Ann M. Bartuska,

Deputy Chief for Research & Development.

[FR Doc. E8–368 Filed 1–11–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting with presenter on Bitterroot Composite Lumber Company and to hold a short public forum, along with voting for new chairperson. The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on January 22, 2008, 6:30 p.m.

ADDRESSES: The meeting will be held at the Bitterroot National Forest, 1801 N First, Hamilton, MT. Send written comments to Daniel Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Daniel Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: January 7, 2008.

David T. Bull,

Forest Supervisor.

[FR Doc. 08–89 Filed 1–11–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

T–5–2007

Foreign–Trade Zone 38 - Spartanburg County, SC, Application for Temporary/Interim Manufacturing Authority, Kittel Supplier USA, Inc. (Automotive Roof/Luggage Racks), Notice of Approval

On October 26, 2007, an application was filed by the Executive Secretary of the Foreign–Trade Zones (FTZ) Board submitted by the South Carolina State Ports Authority, grantee of FTZ 38, requesting temporary/interim manufacturing (T/IM) authority on behalf of Kittel Supplier USA, Inc., to assemble automotive roof/luggage racks under FTZ procedures within FTZ 38 Site 3, Duncan, South Carolina.

The application has been processed in accordance with T/IM procedures, as authorized by FTZ Board Orders 1347 (69 FR 52857, 8–30–2004) and 1480 (71 FR 55422, 9–22–2006), including notice in the **Federal Register** inviting public comment (72 FR 62429, 11–5–2007). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval under T/IM procedures. The foreign–origin components approved for this activity are: rubber seals (4016.93); bolts (7308.15); screws (7318.19); steel pins (7318.29); aluminum rails and support legs (8708.29); mounting brackets (8708.29); and, plastic support legs (8708.99). Pursuant to the authority delegated to the FTZ Board Executive Secretary in the above–referenced Board Orders, the application is approved, effective this date, until January 7, 2010, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Dated: January 7, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–457 Filed 1–11–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–926]

Sodium Nitrite from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

EFFECTIVE DATE: January 14, 2008.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3964 and (202) 482–3586, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 28, 2007, the Department of Commerce (the Department) initiated the countervailing duty investigation of sodium nitrite from the People's Republic of China (PRC). *See Sodium Nitrite from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 72 FR 68568 (December 5, 2007). Currently the preliminary determination is due no later than February 1, 2008.

Postponement of Due Date for Preliminary Determination

On January 4, 2008, petitioner submitted a letter requesting that the Department postpone the preliminary determination of the countervailing duty investigation of sodium nitrite from the PRC. Under section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), the Department may extend the deadline for the preliminary determination in a countervailing duty investigation until not later than the 130th day after the date on which the administering authority initiates an investigation if the petitioner makes a timely request for an extension of the period within which the determination must be made under section 703(b) of the Act. Pursuant to section 351.205(e) of the Department's regulations, the petitioner's request for postponement of the preliminary determination was made 25 days or more before the scheduled date of the preliminary determination. Accordingly, we are extending the due date for the preliminary determination by 65 days to no later than April 6, 2008. Because April 6, 2008 is a Sunday, the

Department will issue the preliminary determination no later than April 7, 2008.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: January 8, 2008.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E8–455 Filed 1–11–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Hand Trucks and Certain Parts Thereof from the People's Republic of China; Preliminary Results, Partial Intent to Rescind and Partial Rescission of the 2005–06 Administrative Review

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

SUMMARY: In response to requests from interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on hand trucks and certain parts thereof (''hand trucks'') from the People's Republic of China (''PRC'') covering the period December 1, 2005, through November 30, 2006. We have preliminarily determined that sales have been made below normal value (''NV'') by one exporter participating in the review. We have also preliminarily rescinded the review for five exporters that did not have any exports during the period of review (''POR'') or whose request for review was timely withdrawn. We have also preliminarily determined that two companies have not demonstrated that they are entitled to separate rates and have assigned them the rate for the PRC–wide entity. If these preliminary results are adopted in the final results of these reviews, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: (January 14, 2008.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, 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) 482–4474.

Background

On December 1, 2006, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on hand trucks from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 69543 (December 1, 2006). In accordance with 19 CFR 351.213(b)(1), on December 29, 2006, Petitioners, Gleason Industrial Products, Inc. and Precision Products, Inc., requested that the Department conduct an administrative review for the following exporters of the subject merchandise: Qingdao Huatian Hand Truck Co., Ltd. (''Huatian''); Qingdao Future Tool, Inc. (''Future Tool''); Qingdao Taifa Group Co. Ltd. (''Taifa''); True Potential Co., Ltd. (''True Potential''); Shandong Machinery I&E Group Corp. (''Shandong Machinery''); Since Hardware (Guangzhou) Co., Ltd. (''Since Hardware''); Formost Plastics & Metalworks (Jiazing) Co., Ltd. (''Formost''); and Forecarry Corp (''Forecarry''). Also, on December 29, 2006, the Department received a request to conduct an administrative review from Taifa, an exporter of the subject merchandise.

On January 3, 2007, the Department received a request to conduct an administrative review from Since Hardware, an exporter of subject merchandise from the PRC. On February 2, 2007, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of hand trucks from the PRC for the period December 1, 2005, through November 30, 2006, with respect to eight companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007).

On March 1, 2007, the Department issued quantity and value (''Q&V'') questionnaires along with separate rate applications and certifications to Forecarry, Formost, Future Tool, Huatian, Shandong Machinery, Since Hardware, True Potential, and Taifa requesting each party's quantity (*i.e.*, pieces) and U.S. dollar sales value of all exports of hand trucks and parts thereof to the United States during the POR. *See* Quantity and Value Questionnaire (''Q&V Questionnaire'') dated March 1, 2007. In our Q&V questionnaire, we notified all interested parties that we were considering limiting the number of respondents selected for review in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (''Act''), due to the number of firms requested for this administrative review and the resulting administrative burden to review each company for which a request had been made. On March 15, 2007, we received responses to the Q&V questionnaire from Huatian, Since Hardware (stating it had no shipments during the POR), Taifa and True Potential. On May 1 and 25, 2007, we issued letters to Formost, Forecarry, Future Tool, and Shandong Machinery providing each a second opportunity to respond to the Department's request for Q&V information. *See* Second Quantity and Value Questionnaire dated May 1, 2007 (''Second Q&V Questionnaire''). On June 4, 2007, Formost and Forecarry responded to the Department's request for Q&V information stating that they had no exports to the United States during the POR. Future Tool and Shandong Machinery did not respond to the Department's letters. *See* the ''Facts Available'' section of this notice, below, for further discussion.

On March 15, 2007, Since Hardware withdrew its request for an administrative review within the time limits specified under 19 CFR 351.213(d)(1). *See* the ''Partial Rescission of Administrative Review'' section of this notice, below, for further discussion. On May 3, 2007, Petitioners withdrew their request for an administrative review within the time limits specified under 19 CFR 351.213(d)(1) with respect to Huatian, Taifa, and True Potential.

On June 21, 2007, the Department determined that it was not practicable to examine individually all of the companies covered by the 2005–2006 administrative review, and thus it limited its examination to the largest producers/exporters that could reasonably be reviewed, pursuant to section 777A(c)(2)(B) of the Act. Therefore, on this date the Department selected Taifa as the sole respondent required to submit a full questionnaire response in the administrative review (*i.e.*, mandatory respondent). *See* the memorandum titled ''Antidumping Duty Administrative Review of Hand Trucks and Certain Parts Thereof from the People's Republic of China: Selection of Respondents'' dated June 21, 2007.

On June 22, 2007, we issued the antidumping duty questionnaire to Taifa. We received separate–rate certifications from Taifa and True Potential. On July 13, 2007, we received Taifa's responses to section A of the Department's original questionnaire. On August 14, 2007, we received Taifa's response to sections C and D of the Department's original questionnaire. On

September 4, 2007, we issued a supplemental questionnaire regarding section A to Taifa. On September 11, 2007, we received Taifa's response to our supplemental section A. On September 14, 2007, we issued a supplemental questionnaire regarding sections C and D to Taifa. On October 11, 2007, we received Taifa's response to sections C and D of the Department's supplemental questionnaire. On November 26, 2007, we issued a second supplemental questionnaire regarding sections A, C, and D to Taifa. On November 28, 2007, we issued a third supplemental to Taifia regarding sections C and D. On December 7, 2007, we received a response from Taifa to the November 26, 2007, supplemental questionnaire. On December 10, 2007, we received a response from Taifa to the November 28, 2007, supplemental questionnaire. On December 14, 2007, we issued a fourth supplemental to Taifia regarding section C.

On October 4, 2007, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production (''FOPs''). On October 31, 2007, Petitioners provided comments on surrogate country selection.

On August 31, 2007, the Department issued a **Federal Register** notice extending the time limits for the preliminary results of administrative review until no later than December 3, 2007. *See Hand Trucks and Certain Parts Thereof From the People's Republic of China; Extension of Time Limits for Preliminary Results in Antidumping Duty Administrative Review*, 72 FR 51411 (September 7, 2007). Additionally, on November 23, 2007, the Department issued a **Federal Register** notice fully extending the time limits for the preliminary results of administrative review until no later than December 31, 2007. *See Hand Trucks and Certain Parts Thereof From the People's Republic of China; Full Extension of Time Limits for Preliminary Results in Antidumping Duty Administrative Review*, 72 FR 67701 (November 30, 2007).

Period of Review

The POR covers December 1, 2005, through November 30, 2006.

Scope of Order

The product covered by this order consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof.

A complete or fully assembled hand truck is a hand–propelled barrow consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of this petition. That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the petition. That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition. Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition.

Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. They are typically imported under heading 8716.80.50.10 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''), although they may also be imported under heading 8716.80.50.90. Specific parts of a hand truck, namely the vertical frame, the handling area and the projecting edges or toe plate, or any combination thereof, are typically imported under heading 8716.90.50.60 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope is dispositive.

Excluded from the scope are small two–wheel or four–wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular material measuring less than 5/8 inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers designed specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary must rescind an administrative review if a party requesting a review withdraws the request within 90 days of the date of publication of the notice of initiation. As noted above, on March 15, 2007, Since Hardware timely withdrew its request for an administrative review. However, because Petitioners did not withdraw their review request with respect to Since Hardware, we are not rescinding the review for Since Hardware based on its withdrawal of its request for review. Also, on May 3, 2007, Petitioners withdrew their request for an administrative review with respect to Huatian, Taifa, and True Potential, in accordance with 19 CFR 351.213(d)(1). Because no other interested party requested a review of Huatian or True Potential, in accordance with 19 CFR 351.213(d)(1) and consistent with our practice, we are rescinding the administrative review of these companies for the POR.

Partial Intent to Rescind Administrative Review

On March 15, 2007, Since Hardware responded to the Department's Q&V questionnaire stating it had no POR shipments to the United States. On June 27, 2007, Petitioners submitted comments arguing that Since Hardware incorrectly stated that it exported no subject merchandise to the United States during the POR. Petitioners based their argument on the Department's new shipper verification report of Since Hardware from the 2004–2005 new shipper review. *See* Letter from Petitioners; Hand Trucks and Parts Thereof from the People's Republic of China: Selection of Respondents, dated June 27, 2007, at Exhibit 2, ''Verification of Sales and Factors Responses of Since Hardware (Guangzhou) Co., Ltd. in the New Shipper Review of Hand Trucks and Certain Parts Thereof from the People's Republic of China'' (''NSR Verification Report'') (October 5, 2006). Citing the NSR Verification Report, Petitioners contend that at verification in the 2004–2005 review, the Department compared a post–POR sale to Since Hardware's NSR sale. *See* NSR Verification Report at page 4. We examined the NSR Verification Report

that refers to a production order but does not refer to an actual sale. Petitioners have not put forth any other evidence of a shipment by Since Hardware during the POR.

Further, record evidence indicates that Formost, Forecarry, and Since Hardware did not have any exports of subject merchandise during the POR. *See* March 15, 2007, Q&V response from Since Hardware and June 4, 2007, Q&V response from Formost and Forecarry. Additionally, we have reviewed the CBP entry data for the POR and found no evidence of exports from these three entities. *See* Memorandum to the File from Robert Bolling, Hand Trucks and Certain Parts Thereof from the People's Republic of China, No Shipment Inquiry, dated November 26, 2007, and Memorandum to the File from Robert Bolling, Hand Trucks and Certain Parts Thereof from the People's Republic of China, No Shipment Inquiry, dated December 13, 2007. We have received no evidence that Formost, Forecarry, or Since Hardware had any shipments to the United States of subject merchandise during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), the Department preliminarily rescinds this review as to Formost, Forecarry, and Since Hardware.

Non–Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (''NME'') country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See*, *e.g.*, *Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 69 FR 70638 (Dec. 7, 2004). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer's FOPs. The Act further instructs that valuation of the FOPs shall be based on the best available information in a surrogate market economy country or countries considered to be appropriate by the Department. *See* Section 773(c)(1) of the Act. When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. *See* Section 773(c)(1) of the Act. The sources of the surrogate values (''SV'') are discussed under the *Normal Value* section below and in the Memorandum to the File, Factors Valuations for the Preliminary Results of the Administrative Review, dated December 31, 2007 (''Factor Valuation Memorandum''), which is on file in the Central Records Unit (''CRU''), Room B–099 of the main Commerce Building.

The Department first determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See* Memorandum to the File, Administrative Review of Hand Trucks and Certain Parts Thereof from the People's Republic of China (PRC): Request for a List of Surrogate Countries, dated October 3, 2007, (''Policy Memo'') which is on file in the CRU.

On October 4, 2007, the Department issued a request for parties to submit comments on surrogate country selection. On October 31, 2007, Petitioners submitted comments regarding the selection of a surrogate country.[1] No other party to the proceeding submitted information or comments concerning the selection of a surrogate country. Petitioners assert that India is the appropriate surrogate country for the PRC because India meets the statutory criteria set forth in section 773(c)(4) of the Act for selection as a surrogate country for the PRC.

On December 10, 2007, the Department issued its surrogate country memorandum in which we addressed the parties' comments. *See* Memorandum to the File, Antidumping Duty Administrative Review of Hand Trucks and Certain Parts Thereof from the People's Republic of China: Selection of a Surrogate Country, dated December 10, 2007 (''Surrogate Country Memorandum''), which is on file in the CRU. After evaluating concerns and comments, the Department determined that India is the appropriate surrogate country to use in this review. The Department based its decision on the following facts: 1) India is at a level of economic development comparable to that of the PRC; 2) India is a significant producer of comparable merchandise; and 3) India provides the best opportunity to use quality, publicly available data to value the FOPs. *See* Surrogate Country Memorandum.

Therefore, we have selected India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the respondents' FOPs, when available and appropriate. We have obtained and relied upon publicly available information wherever possible. *See* Factor Valuation Memorandum. In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly available information to value FOPs until 20 days after the date of publication of these preliminary results.

Facts Available

A. Application of Facts Available

Section 776(a)(1) and (2) of the Act provides 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, (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 and 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 supplied if it can do so without undue difficulties.

[1] Letter dated October 31, 2007, from Petitioners to Secretary of Commerce, re: Hand Trucks and Certain Parts Thereof from the People's Republic of China.

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. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See Statement of Administrative Action*, H.R. Doc. 103–316 at 870 (1994) (''SAA''). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id*. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

Future Tool & Shandong Machinery

On March 1, 2007, we issued Q&V Questionnaires along with separate–rate applications and certifications to Future Tool and Shandong Machinery, and requested a response by March 15, 2007. *See* Q&V Questionnaire. Neither Future Tool nor Shandong Machinery provided a response to our initial Q&V Questionnaire. On May 1, 2007, we issued a second Q&V Questionnaire to Future Tool and Shandong Machinery. *See* Second Q&V Questionnaire. Once again, neither Future Tool nor Shandong Machinery provided a response to our second Q&V Questionnaire. Moreover, Future Tool and Shandong Machinery did not file a separate–rate application/certification and thus failed to establish their eligibility for a separate rate. Therefore, both Future Tool and Shandong Machinery will be part of the PRC–wide entity, subject to the PRC–wide rate. This rate will be based on facts available, as discussed below.

The PRC–Wide Entity

The Department issued a letter to all respondents identified in the *Initiation Notice* informing them of the requirements to respond to both the Department's Q&V questionnaire and either the separate–rate application or certification, as appropriate. Both Future Tool and Shandong Machinery failed to respond to the Q&V Questionnaire and the separate–rate application/certification. Therefore, the Department determines preliminarily that there were exports of merchandise under review from PRC producers/exporters that did not respond to the Department's Q&V questionnaire and consequently did not demonstrate their eligibility for separate–rate status. As a result, the Department is treating these PRC producers/exporters as part of the countrywide entity.

Additionally, because we have determined that the companies named above are part of the PRC–wide entity, the PRC–wide entity is now under review. Pursuant to section 776(a) of the Act, we further find that because the PRC–wide entity (including the companies discussed above) failed to respond to the Department's questionnaires, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, submitted information that cannot be verified, or otherwise impeded the proceeding, it is appropriate to apply a dumping margin for the PRC–wide entity using the facts otherwise available on the record.

B. Adverse Facts Available (''AFA'')

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); *see also Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (''*Nippon*'').

Both Future Tool and Shandong Machinery were notified in the Department's questionnaires that failure to submit the requested information by the date specified might result in the use of facts available. Generally, it is reasonable to assume that the PRC–wide entity (including Shandong Machinery and Future Tool) possessed the records necessary for this administrative review and that, by not supplying the information the Department requested, these companies failed to cooperate to the best of their ability. In addition, none of the companies in this review argued that it was incapable of providing the information the Department requested, or requested that the Department modify its reporting requirements in accordance with 782(c)(1) of the Act. Accordingly, because the PRC–wide entity (including Future Tool and Shandong Machinery) failed to respond to the Department's requests for information, we preliminarily find that the PRC–wide entity has not acted to the best of its ability in this proceeding, within the meaning of section 776(b) of the Act. Therefore, an adverse inference is warranted in selecting from the facts otherwise available. *See Nippon*, 337 F.3d at 1382–83.

C. Selection of An AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: 1) the petition; 2) a final determination in the investigation; 3) any previous review or determination; or 4) any information placed on the record. In reviews, the Department normally selects as AFA the highest rate determined for any respondent in any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19508 (April 21, 2003). The Court of International Trade (''CIT'') and the Court of Appeals for the Federal Circuit (''Federal Circuit'') have consistently upheld the Department's practice. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (''*Rhone Poulenc*''); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less–than-fair–value (''LTFV'') investigation); *Kompass Food Trading Int'l v. United States*, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total

AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review). The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870; *see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910, 76912 (December 23, 2004); and *D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced *current* information showing the margin to be less.'' *See Rhone Poulenc*, 899 F.2d at 1190. Consistent with the statute, court precedent, and its normal practice, the Department has assigned the rate of 383.60 percent to the PRC–wide entity (including Future Tool and Shandong Machinery) as AFA. This rate was assigned in the investigation of this proceeding and is the highest rate determined for any party in any segment of this proceeding. *See Amended Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof From the People's Republic of China*, 69 FR 65410 (November 12, 2004) (*Hand Trucks Amended Final Determination*). As discussed below, this rate has been corroborated.

D. Corroboration of Secondary Information

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870. The Department has determined that to have probative value, information must be reliable and relevant. *See* SAA at 870; *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* SAA at 870. *See also Preliminary Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627, 35629 (June 16, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 62560, 62561 (Nov. 5, 2003); and *Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181, 12183–84 (March 11, 2005).

We are applying as AFA the highest rate from any segment of this administrative proceeding, which is the rate currently applicable to all exporters subject to the PRC–wide rate. The information upon which the AFA rate is based in the current review (*i.e.*, the PRC–wide rate of 383.60 percent) was the highest rate calculated based on information contained in the petition in the LTFV investigation. *See Hand Trucks Amended Final Determination*, 69 FR at 65411. This AFA rate is the same rate that the Department assigned to certain hand truck companies in the original LTFV final determination. In the investigation, the Department determined the reliability of the margin contained in the petition by comparing the U.S. prices from the price quotes in the petition to prices of comparable products sold by Huatian, a mandatory respondent in the LTFV investigation, and found them to be comparable. The Department also compared the SVs used in the petition to the SVs selected for the final determination, and then adjusted and replaced certain values to make them more accurate. Finally, the Department replaced the SV ratios in the petition with those used in the final investigation. Therefore, in the investigation, we found this margin to be reliable. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof From the People's Republic of China*, 69 FR 29509 (May 24, 2004), and *Notice of Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 FR 60980 (October 14, 2004), as amended by *Hand Trucks Amended Final Determination*, 69 FR at 65411. Further, the application of this margin was subject to comment from interested parties in that segment of the proceeding. The Department has received no information to date that warrants revisiting the issue of the reliability of the rate and no party has submitted comments challenging the reliability of this margin. Thus, the Department finds that the margin calculated in the LTFV investigation is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1222 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. Further, the selected margin is currently the PRC–wide rate. As there is no information on the record of this review that indicates that this rate is not

relevant as AFA for Future Tool and Shandong Machinery and the PRC–wide entity, we determine that this rate is relevant.

Because the rate is both reliable and relevant, it has probative value. Accordingly, we determine that the highest rate determined in any segment of this administrative proceeding (*i.e.*, 383.60 percent) is corroborated (*i.e.*, it has probative value). We have assigned this AFA rate to exports of the subject merchandise by the PRC–wide entity, including Future Tool and Shandong Machinery.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Taifa has provided company–specific information and has certified that it meets the standards for the assignment of a separate rate.

We have considered whether Taifa is eligible for a separate rate. The Department's separate–rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See*, *e.g.*, *Certain Cut–to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61758 (November 19, 1997); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2,1994) (''*Silicon Carbide*''). In accordance with the separate–rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

On June 22, 2007, we received Taifa's separate–rate certification. Our analysis shows that, for Taifa, the evidence on the record supports a preliminary finding of *de jure* absence of government control based on record statements and supporting documentation showing the following: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) the applicable legislative enactments decentralizing control of the companies; and 3) any other formal measures by the government decentralizing control of companies. *See* Tafia's Separate Rate Certification Submission dated March 15, 2007.

2. Absence of *De Facto* Control

Through previous cases, the Department has learned that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has the authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589.

We determine that, for Taifa, the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: 1) it sets its own export prices independent of the government and without the approval of a government authority; 2) it retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) it has the authority to negotiate and sign contracts and other agreements; and 4) it has autonomy from the government regarding the selection of management. *See* Tafia's Separate Rate Certification Submission, dated March 15, 2007.

On December 7, 2007, Petitioners put on the record certain evidence that Petitioners claimed demonstrated that the PRC government owns a majority of shares in Taifa and that Taifa is therefore subject to government control and ineligible for a separate rate. *See* Handtrucks and Parts Thereof from the People's Republic of China: Comments Regarding Taifa's Questionnaire Responses. In our separate–rate analysis, however, government ownership by itself is not dispositive in determining government control. *See Silicon Carbide*, 59 FR at 22586. As described above, we analyze *de jure* and *de facto* evidence to determine government control. In their December 7, 2007, submission, Petitioners have provided no other evidence regarding the *de jure* and *de facto* factors in our separate–rates test. Therefore, because evidence placed on the record of this administrative review by Taifa demonstrates an absence of government control, both in law and in fact, with respect to Taifa's exports of the subject merchandise, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*, for the purposes of these preliminary results, we have granted a separate rate to Taifa.

Normal Value Comparisons

To determine whether sales of the subject merchandise by Taifa to the United States were made at prices below

NV, we compared each company's export prices (EPs) to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

For Taifa, we used EP methodology in accordance with section 772(a) of the Act for sales in which the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States and for sales in which constructed export price was not otherwise indicated.

For Taifa, we calculated EP based on delivered prices to unaffiliated purchaser(s) in the United States. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight, foreign brokerage and handling expenses, marine insurance. For a detailed description of all adjustments, *see* Memorandum to The File Through Robert Bolling, Program Manager, China/NME Group, from Paul Stolz, Case Analyst, Analysis for the Preliminary Results of Hand Trucks and Certain Parts Thereof from the People's Republic of China: Qingdao Taifa Group Co. Ltd. (''Analysis Memo Taifa''), dated concurrently with this notice.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOPs methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used FOPs reported by respondents for materials, energy, labor and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market–economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see* also *Lasko Metal Products, Inc. v. United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994). However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the market economy purchase prices and use SVs to determine the NV. *See Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005–2006 Administrative Review*, 72 FR 42386 (August 2, 2007) (''Brake Rotors''), and accompanying Issues and Decision Memorandum at Comment 1.

It is the Department's consistent practice that, where the facts developed in the United States or third country countervailing duty findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non–industry-specific export subsidies), it is reasonable for the Department to find that it has particular and objective evidence to support a reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized. *See Brake Rotors* and *China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1338–39 (CIT 2003).

In avoiding the use of prices that may be subsidized, the Department does not conduct a formal investigation to ensure that such prices are not subsidized, but rather relies on information that is generally available at the time of its determination. *See* H.R. Rep. 100–576, at 590 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. Through other proceedings, the Department has learned that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, finds it reasonable to infer that all exports to all markets from these countries may be subsidized. *See Brake Rotors*. Accordingly, we have disregarded prices from Indonesia, South Korea and Thailand in calculating the Indian import–based SVs because we have reason to believe or suspect such prices may be subsidized.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by respondents for the POR. To calculate NV, we multiplied the reported per unit factor consumption quantities by publicly available Indian SVs (except as noted below). In selecting the SVs, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market–economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). Due to the extensive number of SVs it was necessary to assign in this administrative review, we present a discussion of the main factors. For a detailed description of all SVs used to value the respondent's reported FOPs, see Factor Valuation Memorandum.

During the POR, Taifa purchased all or a portion of certain inputs from a market economy supplier and paid for the inputs in a market economy currency. The Department has instituted a rebuttable presumption that market economy input prices are the best available information for valuing an input when the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. In these cases, unless case–specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted–average market economy purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from market economy suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight–average the weighted–average market economy purchase price with an appropriate SV according to their respective shares of the total volume of purchases, unless case–specific facts provide adequate grounds to rebut the presumption. When a firm has made market economy input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of

whether valid market economy purchases meet the 33–percent threshold. *See Antidumping Methodologies: Market Economy Inputs, Expected Non–Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–18 (October 19, 2006). Accordingly, we valued Taifa's inputs using the market economy prices paid for the inputs where the total volume of the input purchased from all market economy sources during the POR exceeded 33 percent of the total volume of the input purchased from all sources during that period. Alternatively, when the volume of Taifa's purchases of an input from market economy suppliers during the POR was below 33 percent of the company's total volume of purchases of the input during the POR, we weight–averaged the weighted–average market economy purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases, as appropriate. Where appropriate, we increased the market economy prices of inputs by freight and brokerage and handling expenses. *See* Taifa's Factor Value Memorandum. For a detailed description of all actual values used for market–economy inputs, *see* the Analysis Memo Taifa. Where the quantity of the input purchased from market–economy suppliers is insignificant, the Department will not rely on the price paid by an NME producer to a market–economy supplier because it cannot have confidence that a company could fulfill all its needs at that price.

We used contemporaneous import data from the World Trade Atlas online (''Indian Import Statistics''), published by the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, to calculate SVs for the reported FOPs purchased from NME sources. Where data appeared to be aberrational within selected HTS values, we removed the aberrational data from the calculation of these selected HTS values. Among the FOPs for which we calculated SVs using Indian Import Statistics are brightening agents, carbon dioxide, cast aluminum, dye, epoxy resin, hot–rolled steel plate, nitric acid, phosphoric acid, steel rod, zinc ingots, and zinc powder. For a complete listing of all the inputs and the valuation for each mandatory respondent *see* the Factor Valuation Memorandum.

Where we could not obtain publicly available information contemporaneous with the POR with which to value FOPs, we adjusted the SVs using, where appropriate, the Indian Wholesale Price Index (''WP'') as published in the International Financial Statistics of the International Monetary Fund. *See* Factor Valuation Memorandum; *see* also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517, 2522 (January 17, 2006).

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's website, Import Library, Expected Wages of Selected NME Countries, revised in January 2007, http://ia.ita.doc.gov/wages/04wages/04wages–010907.html. The source of these wage–rate data is the Yearbook of Labour Statistics 2006, ILO (Geneva: 2006), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 2004 and 2005. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. *See* Factor Valuation Memorandum.

To value electricity, we used data from the International Energy Agency (''IEA'') *Key World Energy Statistics* (2003 edition). Because the value for electricity was not contemporaneous with the POR, we adjusted it for inflation. See Factor Valuation Memorandum.

To calculate the value for domestic brokerage and handling, the Department used information available to it contained in the public version of two questionnaire responses placed on the record of separate proceedings. The first source was December 2003–November 2004 data contained in the public version of Essar Steel's February 28, 2005, questionnaire submitted in the antidumping duty administrative review of hot–rolled carbon steel flat products from India. *See Certain Hot–Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006)(unchanged in final results). This value was averaged with the February 2004–January 2005 data contained in the public version of Agro Dutch Industries Limited's (''Agro Dutch'') May 24, 2005, questionnaire response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from India. *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005) (Agro Dutch's May 24, 2005, submission). The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions are ranged data. The Department derived an average per–unit amount from each source and then adjusted each average rate for inflation using the WPI. The Department then averaged the two per–unit amounts to derive an overall average rate for the POR. *See* Factor Valuation Memorandum.

To value international freight, the Department obtained generally publicly available price quotes from Maersk Sealand at http://www.maersksealand.com/HomePage/appmanager/, a market–economy provider of international freight services. *See* Factor Valuation Memorandum.

The Department valued steam coal using the 2003/2004 Tata Energy Research Institute's Energy Data Directory & Yearbook (''TERI Data''). The Department was able to determine, through its examination of the 2003/2004 TERI Data, that: a) the annual TERI Data publication is complete and comprehensive because it covers all sales of all types of coal made by Coal India Limited and its subsidiaries, and b) the annual TERI Data publication prices are exclusive of duties and taxes. Because the value was not contemporaneous with the POR, the Department adjusted the rate for inflation. *See* Factor Valuation Memorandum.

We used Indian transport information in order to value the freight–in cost of the raw materials. The Department determined the best available information for valuing truck and rail freight to be from www.infreight.com. This source provides daily rates from six major points of origin to five destinations in India during the POR. The Department obtained a price quote on the first day of each month of the POR from each point of origin to each destination and averaged the data accordingly. *See* Factor Valuation Memorandum.

To value factory overhead, selling, general, and administrative expenses (''SG&A''), and profit, we used the audited financial statements for the fiscal year ending March 31, 2005, from the following producer: Rexello Castors Pvt. Ltd., which is an Indian producer of comparable merchandise. From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (''ML&E'') costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a

percentage of the cost of manufacture plus SG&A. For further discussion, *see* Factor Valuation Memorandum.

We valued diesel oil using data obtained from the IEA *Key World Energy Statistics 2007*, for the first quarter of 2007. Because these data were after the POR, we applied a WPI deflator to make them contemporaneous with the POR. *See* Factor Valuation Memorandum.

Finally, Taifa reported that it generated certain other by–products as a result of the production of hand trucks. We valued aluminum and steel scrap using Indian import statistics as published by the *WTA*, contemporaneous with the POR. We valued aluminum scrap and recycled paint powder using Indian import statistics as published by the *WTA*, contemporaneous with the POR.

Preliminary Results of Review

We preliminarily determine that the following margins exist during the period December 1, 2005, through November 30, 2006:

HAND TRUCKS AND PARTS THEREOF FROM THE PRC

Exporter	Weighted–Average Margin (Percent)
Qingdao Taifa Group Co. Ltd.	3.82
PRC–Wide Rate[2]	383.60

[2] We note that because both Future Tool and Shandong Machinery are part of the PRC-wide entity, they are subject to the PRC-wide rate.

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will generally be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). Further, we request that parties submitting written comments provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any comments, and at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer- or customer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. To determine whether the duty assessment rates are *de minimis* (*i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate customer–specific *ad valorem* ratios based on export prices.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer- or customer–specific assessment rate calculated in the final results of this review is above *de minimis*.

For entries of the subject merchandise during the POR from companies not subject to this review, we will instruct CBP to liquidate them at the cash deposit rate in effect at the time of entry. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) for Taifa, which has a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that received a separate rate in a prior segment of this proceeding (which were not reviewed in this segment of the proceeding), the cash deposit rate will continue to be the exporter–specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 383.60 percent; and (4) for all non–PRC exporters of subject merchandise which 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, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: December 31, 2007.

Susan H. Kuhbach,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E8–456 Filed 1–11–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

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

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

EFFECTIVE DATE: January 14, 2008.

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

SUPPLEMENTARY INFORMATION: On August 6, 2007, the Department of Commerce

(the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico for the period July 1, 2005 through June 30, 2006. *See Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 43600 (August 6, 2007). On September 4, 2007, we published a notice in the **Federal Register** partially extending the due date of the final results until January 10, 2008. *See Stainless Steel Sheet and Strip in Coils from Mexico: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 72 FR 50663 (September 4, 2007).

Second Extension of Time Limits for Final Results

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

The Department finds that it is not practicable to complete this review within the original time frame due to additional analysis that must be performed with respect to certain adjustments made to the cost of production. Furthermore, our post–preliminary results cost verification forced an extension of the briefing schedule for parties' comments and rebuttals. Consequently, and in accordance with section 751(a)(3)(A) of the Tariff Act and 19 CFR 351.213(h)(2), the Department is further extending the time period for issuing the final results of review to 180 days after the publication of the preliminary results. Therefore, the final results will be due no later than February 2, 2008.[1] This notice is published in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: January 8, 2008.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E8–454 Filed 1–11–08; 8:45 am]

BILLING CODE 3510–DS–S

[1] Because February 2, 2008 falls on a Saturday, the final results will be due no later than Monday February 4, 2008.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE85

Endangered Species

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

ACTION: Notice of Availability.

SUMMARY: NMFS has completed a draft Programmatic Environmental Assessment (PEA) on the Issuance of Endangered Species Act Permits for Scientific Research on Endangered and Threatened Sea Turtles in the North Atlantic Ocean, Caribbean Sea, and Gulf of Mexico.

DATES: Written, telefaxed, or e-mail comments must be received on or before February 13, 2008.

ADDRESSES: The PEA is available for review upon written request or by appointment in the following office:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; *http://www.nmfs.noaa.gov/pr/permits/review.htm.*

Written comments should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, at the above address.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: Sea Turtle Programmatic EA.

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

SUPPLEMENTARY INFORMATION: NMFS has authority, delegated from the Secretary of Commerce, to issue permits for research and enhancement activities under Section 10(a)(1)(A) of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). Permits to take endangered or threatened non-marine mammal species are governed by the ESA and NMFS implementing regulations at 50 CFR 222.301–309. Where coordination with the United States Fish and Wildlife Service is required regarding sea turtles, permits are subject to NMFS regulatory criteria at 50 CFR 222.309.

NMFS is required by the National Environmental Policy Act (NEPA) and 40 CFR 1508.27 to consider the significance of the effects of authorizing research activities on listed species of sea turtles (proposed action). The action being considered in this PEA was analyzed as a whole, by effects on affected interests, and by short- and long-term effects. Additionally, the severity of the impacts was analyzed.

NMFS is proposing to more efficently complete its review and issuance process for ESA section 10(a)(1)(A) scientific research permits and permit modifications on sea turtle species in the North Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. To date, NMFS analyzes each proposed permit action through separate EAs, one for each permit application. The preferred alternative would allow NMFS to more efficently analyze the potential collective environmental impact of research activities over the next five years.

Dated: January 8, 2008.

P. Michael Payne,

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

[FR Doc. E8–495 Filed 1–11–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE92

Fisheries of the South Atlantic and Gulf of Mexico; Southeastern Data, Assessment, and Review (SEDAR); king mackerel.

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

ACTION: Notice of SEDAR Workshops for South Atlantic and Gulf of Mexico king mackerel.

SUMMARY: The SEDAR assessments of the South Atlantic and Gulf of Mexico stocks of king mackerel will consist of a series of three workshops: a Data Workshop, an Assessment Workshop, and a Review Workshop. This is the sixteenth SEDAR. See **SUPPLEMENTARY INFORMATION**.

DATES: The Data Workshop will take place February 11–15, 2008; the Assessment Workshop will take place

May 5–9, 2008; the Review Workshop will take place August 11–15, 2008. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Data Workshop will be held at the Holiday Inn Airport Charleston, 5264 International Blvd., North Charleston, SC 29418, telephone: (843) 576–0300. The Assessment Workshop will be held at the Grand Bay Hotel, 2669 South Bayshore Drive, Miami, FL 33133, telephone: (305) -858–9600. The Review Workshop will be held at the Hyatt Regency Riverfront, 225 Coast Line Drive East, Jacksonville, FL 32202, telephone: (904) 588–1234.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 16 Workshop Schedule:

February 11–15, 2008; SEDAR 16 Data Workshop

February 11, 2008: 1 p.m. - 8 p.m.; February 12–14, 2008: 8 a.m. - 8 p.m.; February 15, 2008: 8 a.m. - 1 p.m.

An assessment data set and associated documentation will be developed during the Data Workshop. Participants will evaluate all available data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

May 5–9, 2008; SEDAR 16 Assessment Workshop

May 5, 2008: 1 p.m. - 8 p.m.; May 6–8, 2008: 8 a.m. - 8 p.m.; May 9, 2008: 8 a.m. - 1 p.m.

Using datasets provided by the Data Workshop, participants will develop population models to evaluate stock status, estimate population benchmarks and Sustainable Fisheries Act criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters. Participants will prepare a workshop report, compare and contrast various assessment approaches, and determine whether the assessments are adequate for submission to the review panel.

August 11–15, 2008; SEDAR 16 Review Workshop

August 11, 2008: 1 p.m. - 8 p.m.; August 12–14, 2008: 8 a.m. - 8 p.m.; August 15, 2008: 8 a.m. - 1 p.m.

The Review Workshop is an independent peer review of the assessment developed during the Data and Assessment Workshops. Workshop Panelists will review the assessment and document their comments and recommendations in a Consensus Summary.

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

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: January 8, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–371 Filed 1–11–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Florida Keys National Marine Sanctuary Final Revised Management Plan; Notice of Availability

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability.

SUMMARY: The final revised management plan for the Florida Keys National Marine Sanctuary (FKNMS) has been approved and is now available. The plan is the result of a multi-year management plan review at the FKNMS that included extensive public, as well as state, local and other federal agency involvement. The plan is available for download on the Web site: *http://floridakeys.noaa.gov.* For a hard copy or data CD of the plan contact the sanctuary office at the contact number identified below.

DATES: The final revised management plan is available to the public on January 11, 2008.

FOR FURTHER INFORMATION CONTACT: Leigh Espy, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, Florida 33040; (305) 292–0311; *Kknms5yearreview@noaa.gov.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 3, 2008.

Daniel J. Basta,

Director, National Marine Sanctuary Program.

[FR Doc. 08–79 Filed 1–11–08; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE96

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), its Mid-Atlantic Bycatch Committee, its Research Set-Aside Committee, its Ecosystems Committee, its Protected Resources Committee, its Executive Committee, and its Surfclam/Ocean Quahog Committee, will hold public meetings.

DATES: The meetings will be held Tuesday, January 29, 2008 through Thursday, January 31, 2008. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Hampton Roads Convention Center, 1610 Coliseum Drive, Hampton, VA 23666; telephone: (888) 484–4722.

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

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Tuesday, January 29, 2008

11 a.m. until 1 p.m. - The Bycatch Committee will meet.

1 p.m. until 3 p.m. - The Research Set-Aside (RSA) Committee will meet.

3 p.m. until 5 p.m. - The Ecosystems Committee will meet.

Wednesday, January 30, 2008

8 a.m. until 9 a.m. - The Protected Resources Committee will meet.

9 a.m. until 10:30 a.m. - The Executive Committee will meet.

10:30 a.m. until noon - The Surfclam/Ocean Quahog Committee will meet.

1 p.m. - The Council will convene to receive a Marine Debris presentation and a (Northeast Monitoring Program) NEAMAP Trawl Survey presentation.

7 p.m. until 8:30 p.m. - A Public Hearing for Amendment 1 to Tilefish Fishery Management Plan (FMP) will be held.

Thursday, January 31, 2008

The Council will convene at 9 a.m. and conclude approximately at 1 p.m.

Agenda items by day for the Council's committees and the Council itself are:

Tuesday, January 29, 2008

The Bycatch Committee will review the use of circle hooks in various fisheries, review hook manufacturing survey results, review use of buoy gear to reduce bycatch, and address the bycatch consequence of highgrading. The RSA Committee will discuss alternative approaches to reviewing project final results and incorporating them into the management process; discuss restructuring the RSA program to a ''Cooperative Agreement'' instead of traditional ''Grant''; and, discuss development of a Mid-Atlantic Consortium similar to the Northeast Consortium. The Ecosystems Committee will receive an EPA report on National Coastal Condition, and receive and discuss the Magnuson-Stevens Act (MSA) Ecosystem Workshop report.

Wednesday, January 30, 2008

The Protected Resources Committee will receive a report on Harbor Porpoise Take Reduction Team activities, and receive a status update on the Atlantic Large Whale Take Reduction Program. The Executive Committee will review the outcome from the most recent Council Coordination Committee meeting and review the proposed changes to the Council's Statement of Organization, Practices and Procedures (SOPP) regarding the Scientific and Statistical Committee (SSC). The Surfclam/Ocean Quahog Committee will consider issues/actions to be addressed in Amendment 14 to the Surfclam and Ocean Quahog FMP. The Council will convene to receive a presentation regarding marine debris and the results of the most recent NEAMAP Trawl Survey. A Public Hearing regarding Amendment 1 to the Tilefish Fishery Management Plan will be held in the evening.

Thursday, January 31, 2008

The Council will convene at 9 a.m. and remain in session until approximately 1 p.m. to receive various reports.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan, (302) 674–2331 ext. 18, at least 5 days prior to the meeting date.

Dated: January 8, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–373 Filed 1–11–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE95

Mid-Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold public hearings to allow for input on Amendment 1 to the Fishery Management Plan (FMP) for the Tilefish Fishery.

DATES: The hearings will be held on Wednesday, January 30, 2008 through Wednesday, February 6, 2008. See **SUPPLEMENTARY INFORMATION** for specific dates, locations, and times of hearings. Written comments will be accepted until February 11, 2008.

ADDRESSES: Send comments to: Daniel T. Furlong, Executive Director of the Mid-Atlantic Fishery Management Council, Suite 2115 Federal Building, 300 South New Street, Dover, DE 19904; fax: (302) 674–5399; e-mail: info@mafmc.org. Please indicate the subject as Tilefish 1.

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

SUPPLEMENTARY INFORMATION: The purpose of the hearings is to receive public input on management actions under consideration in Amendment 1 to the Tilefish FMP. There are 19 proposed

management actions in this Amendment. The proposed management actions could: (1) implement an individual fishing quota (IFQ) program/allocation; (2) establish IFQ permanent transferability of ownership; (3) establish IFQ temporary transferability of ownership; (4) establish IFQ share accumulation guidelines or limitations; (5) implement commercial trip limits in the part-time category; (6) address fees and cost recovery; (7) establish flexibility to revise/adjust the IFQ program; (8) establish IFQ reporting requirements; (9) modify the Interactive Voice Response (IVR) reporting requirements; (10) revise commercial vessel logbook reports; (11) address hook size restrictions in the commercial fishery; (12) implement recreational permits and reporting requirements; (13) implement recreational bag-size limits; (14) improve monitoring of tilefish commercial landings; (15) expand the list of management measures that can be adjusted via the framework adjustment process; (16) modify essential fish habitat (EFH) designation; (17) modify (HAPC (habitat areas of particular concern) designation; (18) implement measures to reduce gear impacts on EFH; and (19) establish methods for collecting royalties under a Tilefish IFQ system.

Dates and Locations of Public Hearings

•*Wednesday, January 30, 2008*: Hampton Roads Convention Center, 1610 Coliseum Drive, Hampton, VA 23666, telephone: (888) 484–4722

•*Monday, February 4, 2008*: Holiday Inn Express East End, 1707 Old Country Road, Riverhead, NY 11901, telephone: (631) 548–1000

•*Tuesday, February 5, 2008*: Hilton Garden Inn, Providence Airport, One Thurber Street, Warwick, RI 02882, telephone: (401) 734–9600.

•*Wednesday, February 6, 2008*: Holiday Inn Toms River, 290 State Highway 37 East, Toms River, NJ 08753, telephone: (732) 244–4000

All hearings begin at 7 p.m. and will be tape recorded with the tapes filed as the official transcript of the hearing.

Special Accommodations

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

Dated: January 9, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–422 Filed 1–11–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE94

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Joint Canada-U.S. Review Panel for Pacific hake/whiting will hold a work session which is open to the public.

DATES: The Joint Canada-U.S. Review Panel will meet beginning at 8.30 a.m., Monday, February 11, 2008 and will continue through Thursday, February 14, 2008. The meetings will end at 5:30 p.m. each day or until business for each day is completed.

ADDRESSES: The Joint Canada-U.S. Review Panel for Pacific hake/ whiting will be held at the Hotel Deca, 4507 Brooklyn Avenue N.E., Seattle WA 98105; telephone: 1–800–899–0251.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, NMFS Northwest Fisheries Science Center; telephone: (206) 437–5670; or Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Joint Canada-U.S. Review Panel for Pacific hake/whiting is to review draft 2008 stock assessment documents and any other pertinent information for Pacific whiting, work with the Stock Assessment Team to make necessary revisions, and produce a Joint Canada-U.S. Review Panel report for use by the Council family and other interested persons for developing management recommendations for 2008 fisheries. No management actions will be decided by the Panel. The Panel's role will be development of recommendations and reports for consideration by the Council at its March meeting in Sacramento, CA.

Although non-emergency issues not contained in the meeting agenda may come before the Panel participants for discussion, those issues may not be the subject of formal Joint Canada-U.S. Review Panel action during this meeting. Panel action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel participants' intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: January 8, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–372 Filed 1–11–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to deliberate on the 2007 findings and recommendations, brief the 2007 report, and discuss the Committee's 2008 agenda. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for consideration by the Defense Department Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the Point of Contact listed below at the address detailed below NLT 5 p.m., Friday, 25 January 2008. If a written statement is not received by Friday, 25 January 2008 prior to the meeting, which is the subject of this notice, then it may not be provided to or considered

by the Defense Department Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Department Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Department Advisory Committee on Women in the Services. If members of the public are interested in making an oral statement, a written statement must be submitted as above. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Determination of who will be making an oral presentation will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Tuesday, 29 January from 4:30 p.m. to 5 p.m. before the full Committee. Number of oral presentations to be made will depend on the number of requests received from members of the public.

Dates & Times: 29 January 2007, 8:30 a.m.–5 p.m. 30 January 2007, 1 p.m.–6 p.m. 31 January 2007, 8:30 a.m.–5 p.m.

Location: Double Tree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: MSgt Robert Bowling, USAF, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. *Robert.bowling@osd.mil.* Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION: Meeting agenda.

Tuesday, 29 January 2008 8:30 a.m.–5 p.m.

Welcome & Administrative Remarks.

Deliberate on findings and vote on recommendations.

Public Forum.

Wednesday, 30 January 2008 1 p.m.–6 p.m.

Welcome & Administrative Remarks.

Receive briefings:

Recruiting, Retention, and Promotion Status of Active Duty Women in the Armed Forces.

Status of Forces Reserve Component Spouses 2006 Survey.

Status of Force Active Duty Spouses.

Meeting/Briefing with Dr. Chu and Mr. Dominguez.

Thursday, 31 January 2008 8:30 a.m.–5 p.m.

Discuss mission, goals, and topics for 2008.

Discuss timeline and installations to visit in 2008.

Note: Exact order may vary.

Dated: January 8, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E8–419 Filed 1–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2008–0001]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Navy is amending a system of records notice 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 February 13, 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 specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 8, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01750–1

SYSTEM NAME:

Navy Ombudsman Registry (February 3, 2007, 72 FR 5022).

CHANGES:

* * * * *

SYSTEM NAME:

Delete ''Navy'' and replace with ''Family''.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Individuals who have volunteered to serve as Navy family ombudsmen in the Navy Family Ombudsmen Program.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 5013, Secretary of the Navy and OPNAVINST 1750.1 Series, Navy Family Ombudsmen Program.''

PURPOSE(S):

In line 1, after the word ''Navy'', add ''family''.

* * * * *

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

STORAGE:

Delete entry and replace with ''Networked databases.''

* * * * *

RETENTION AND DISPOSAL:

In line 1, delete ''ombudsmen'' and replace with ''ombudsman''.

* * * * *

N01750–1

SYSTEM NAME:

Navy Family Ombudsman Registry.

SYSTEM LOCATION:

Fleet and Family Support Program, Navy Installations Command, 2713 Mitscher Road SW., Ste. 300, Anacostia Annex, DC 20373–5802.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to serve as Navy family ombudsmen in the Navy Family Ombudsmen Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, addresses (home, business, and e-mail, phone numbers (home, office,

cell, and fax), command name and address, command unit identification code (UIC), gender, and training dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy and OPNAVINST 1750.1 Series, Navy Family Ombudsmen Program.

PURPOSE(S):

To identify Navy family ombudsmen; provide them with program information; collect program statistics and workload data; and maintain record of program training received.

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' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

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

STORAGE:

Networked databases.

RETRIEVABILITY:

Name and organization.

SAFEGUARDS:

Password controlled system. Access limited to program coordinators, commanding officers and/or their appointed representatives.

RETENTION AND DISPOSAL:

Destroy when ombudsman resigns from position or is replaced.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Family Readiness Programs, Navy Installations Command, 2713 Mitscher Road SW., Ste. 300, Anacostia Annex, DC 20373–5802.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Director, Family Readiness Programs, Navy Installations Command, 2713 Mitscher Road SW., Ste. 300, Anacostia Annex, DC 20373–5802.

The request should include full name and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Director, Family Readiness Programs, Navy Installations Command, 2713 Mitscher Road SW., Ste. 300, Anacostia Annex, DC 20373–5802.

The request should include full name and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and commanding officer and/or their appointed representative.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–420 Filed 1–11–08; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Methodology for the Delaware River and Bay Integrated List Water Quality Assessment

AGENCY: Delaware River Basin Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the methodology, including data sets, to be used in developing the 2008 Delaware River and Bay Integrated List Water Quality Assessment is available for review and comment.

DATES: Comments must be received by close of business on January 28, 2008.

ADDRESSES: Comments will be accepted via e-mail to *john.yagecic@drbc.state.nj.us;* via fax to 609–883–9522; by U.S. Mail to DRBC, Attn: Integrated Assessment 2008, P.O. Box 7360, West Trenton, NJ 08628–0360; via private carrier to DRBC, Attn: Integrated Assessment 2008, 25 State Police Drive, West Trenton, NJ 08628–0360; or by hand. All submissions should have the phrase ''Integrated Assessment 2008'' in the subject line and should include the name, address (street address optional) and affiliation, if any, of the commenter.

FOR FURTHER INFORMATION CONTACT: Mr. John Yagecic, Supervisor, Standards and Assessment Section, DRBC Modeling, Monitoring and Assessment Branch, via e-mail to *john.yagecic@drbc.state.nj.us* or by telephone to 609–883–9500, ext. 271.

SUPPLEMENTARY INFORMATION: The Delaware River Basin Commission (''DRBC'' or ''Commission'') is an interstate and federal compact agency that was created in 1961 by concurrent legislation of the States of Delaware, New Jersey, and New York, the Commonwealth of Pennsylvania and the United States Government for purpose of jointly managing the water resources of the Delaware River Basin.

DRBC currently is compiling data for the 2008 Delaware River and Bay Integrated List Water Quality Assessment (''2008 Assessment'') required by the federal Clean Water Act (CWA). The 2008 Assessment will report the extent to which waters of the Delaware River and Bay are attaining designated uses in accordance with Section 305(b) of the CWA and will identify impaired waters, which consist of waters that do not meet surface water quality standards.

The assessment methodology to be used to develop the 2008 Assessment will closely track the methodology used for the most recent assessment, completed in 2006. The 2006 assessment is available for review at *http://www.state.nj.us/drbc/06IntegratedList/index.htm.*

In the 2008 Assessment DRBC proposes to reduce the number of assessment units from the number used in 2006 by consolidating the units into DRBC's Water Quality Management Zones 1A, 1B, 1C, 1D, 1E, 2, 3, 4, and 5, the boundaries of which are defined in DRBC's Water Quality Regulations (18 CFR Part 410), available on the Web at *http://www.state.nj.us/drbc/regs/WQRegs_092607.pdf*. The 2008 Assessment will continue, however, to include subunits within Zone 6 that are defined in part by shellfish management directives issued by the states of Delaware and New Jersey.

Dated: January 8, 2008.

Pamela M. Bush,

Commission Secretary.

[FR Doc. E8–453 Filed 1–11–08; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Jacob K. Javits Gifted and Talented Students Education Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes a priority under the Jacob K.

Javits Gifted and Talented Students Education Program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2008 and later years. We take this action to support the implementation of models with demonstrated effectiveness in identifying and serving gifted and talented students who are economically disadvantaged or limited English proficient, or who have disabilities, and who may not be identified and served through typical strategies for identifying gifted children. We intend the priority to increase the availability of proven approaches for increasing the number of students from underrepresented groups performing at high levels of academic achievement.

DATES: We must receive your comments on or before February 13, 2008.

ADDRESSES: Address all comments about this proposed priority to Teresa Cahalan, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5W218, Washington, DC 20202–6200. If you prefer to send your comments through the Internet, use the following address: *jacobk.javits@ed.gov.*

You must include the term ''Comments on FY 2008 Javits Priority'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Teresa Cahalan. Telephone: (202) 401–3947.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in Room 5W218, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

General

The purpose of the Jacob K. Javits Gifted and Talented Students Education Program is to carry out a coordinated program of scientifically based research, demonstration projects, innovative strategies, and similar activities designed to build and enhance the ability of elementary schools and secondary schools nationwide to meet the special educational needs of gifted and talented students.

Background of the Priority

Consistent with section 5465(a)(2) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7253), this proposed priority focuses on the implementation and evaluation of projects that expand interventions that identify and serve gifted and talented students who are economically disadvantaged or limited English proficient, or who have disabilities, and who may not be identified and served through typical strategies for identifying gifted children. Specifically, the priority focuses on the expansion of these projects to multiple settings and for different student populations.

In 2007, 32 percent of all 4th grade public school students scored at or above the proficient level in reading on the National Assessment of Educational Progress, compared to only 17 percent of students who are eligible for free or reduced price lunch under the National School Lunch program (i.e., students who are economically disadvantaged), 13 percent of students with disabilities, and 7 percent of students with limited English proficiency. Students from these three groups are significantly underrepresented at or above proficient levels on the 8th grade reading and 4th and 8th grade mathematics assessments.

Since its creation in 1989, the Jacob K. Javits Gifted and Talented Students Education Program has supported over 125 small-scale model projects and intervention strategies, some of which have produced statistically significant increases in student academic achievement on standardized tests. In order to have a national impact with the limited funds available for new awards under this program, the goal of this priority is to expand upon, field-test, and evaluate research-based interventions that have shown evidence of success in increasing the number of economically disadvantaged, limited English proficient, or disabled students performing at high levels of academic achievement.

Based on our experience with previous grants, we have found that successful projects require demonstrated expertise in the following areas: Education research and program evaluation, one or more of the core academic subject areas (English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography), the needs of disadvantaged or other underrepresented students, and gifted and talented education.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Proposed Priority

Under this proposed priority, grantees must ''scale up'' and evaluate models designed to increase the number of students from underrepresented groups who, through gifted and talented education programs, perform at high levels of academic achievement.

For this priority, ''scaling up'' means to expand a program with demonstrated effectiveness at one level (such as a school or other educational setting, student population, grade level, or academic subject area) for use in broader settings or with different populations. With regard to this priority, underrepresented groups refer to the following three groups of students: Economically disadvantaged individuals, individuals with limited English proficiency, and individuals with disabilities.

To meet this priority, applicants must include all of the following in their applications:

(1) Evidence from one or more scientifically based research and evaluation studies indicating that the proposed intervention has raised the achievement of students from one or more underrepresented groups in one or more core subject areas.

(2) Evidence from one or more scientifically based research and evaluation studies that the proposed intervention has resulted in increased numbers of students from underrepresented groups who are prepared to participate in gifted and talented education programs.

(3) Evidence that the applicant has significant expertise on its leadership team in each of the following areas: Research and program evaluation, content knowledge in one or more core academic subject areas, working with underrepresented groups, and gifted and talented education.

(4) A sound plan for implementing the model in multiple settings or with multiple populations.

(5) A research and evaluation plan that employs an experimental or quasi-experimental design to measure the impact of the intervention on the achievement of students who are economically disadvantaged or limited English proficient, or who have disabilities, and on the number of these students who are prepared to participate in gifted and talented education programs.

Note: Evaluation methods using an experimental design are best for determining the effectiveness of interventions. Thus, when feasible, the project must use an experimental design under which participants (*e.g.*, students, teachers, classrooms, or schools) are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants with non-participants having similar pre-intervention characteristics.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.206A Jacob K. Javits Gifted and Talented Students Education Program)

Program Authority: 20 U.S.C. 7253.

Dated: January 9, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–450 Filed 1–11–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of Correspondence from July 1, 2007 through September 30, 2007.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(f) of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). Under section 607(f) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 245–7468.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from July 1, 2007 through September 30, 2007. Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as

letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A—General Provisions

Section 602—Definitions

Topic Addressed: Child With a Disability

○ Letter dated September 11, 2007 to individual (personally identifiable information redacted), regarding how a local educational agency (LEA) may address the needs of a child with a neurological impairment.

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Methods of Ensuring Services

○ Letter dated August 15, 2007 to New Zion, South Carolina Walker Gamble Elementary School official Carlette Morris, regarding use of an interagency agreement between a State or LEA and a State Medicaid Agency to obtain Medicaid reimbursement for Medicaid-covered services included in a Medicaid-eligible child's individualized education program (IEP).

Topic Addressed: Confidentiality of Education Records

○ Letter dated August 7, 2007 to U.S. Representative Bill Shuster, restating the Department's policy that test protocols that do not contain personally identifiable information are not education records under either Part B of IDEA or the Family Educational Rights and Privacy Act.

Topic Addressed: Children With Disabilities Enrolled by Their Parents in Private Schools

○ Letter dated August 22, 2007 to Arizona Director of Exceptional Student Services Colette Chapman, clarifying that children with disabilities placed by their parents in for-profit private schools are not considered ''parentally-placed private school children with disabilities,'' are not included in the proportionate share calculation and are not eligible for equitable services.

○ Letter dated August 29, 2007 to Scarsdale, New York Public Schools Director of Special Education Dr. Michael Mendelson, regarding requirements in Part B of IDEA that are applicable to the LEA where the private school is located when a child with a disability is parentally-placed in a special education private school.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Evaluations and Reevaluations

○ Letter dated July 27, 2007 to individual (personally identifiable information redacted) and letter dated September 24, 2007 to Mountain Plains Regional Resource Center Co-Director Dr. Carol Massanari, regarding the use of response to intervention in evaluating children suspected of having specific learning disabilities.

○ Letter dated August 15, 2007 to Lehigh University Professor Perry A. Zirkel, regarding an LEA's use of its State-adopted criteria for determining whether a child has a specific learning disability.

○ Letter dated September 5, 2007 to New York Attorney Edward J. Sarzynski, regarding whether written parental consent is required for all evaluations that are not standardized tests administered to all students.

Topic Addressed: Individualized Education Programs

○ Letter dated July 19, 2007 to individual (personally identifiable information redacted), regarding a State's proposed rules that relate to IEPs and other requirements in Part B of IDEA.

○ Letter dated August 24, 2007 to Disability Rights Advocate Pat Kelly, clarifying when benchmarks or short-term objectives must be included in the IEPs of students with disabilities who take alternate assessments aligned to alternate achievement standards.

○ Letter dated August 22, 2007 to Trident Literacy Association official Suzy Arents, clarifying that a private nonprofit entity has no obligation to develop IEPs for students with disabilities who have withdrawn from the public school program and who seek literacy services directly from a private nonprofit entity.

○ Letter dated September 4, 2007 to Conway, Arkansas Public Schools official Linda Boswell, regarding translation of IEP documents into a parent's native language.

Section 615—Procedural Safeguards

Topic Addressed: Impartial Due Process Hearing

○ Letter dated August 15, 2007 to Kentucky School Boards Association Senior Attorney Teresa T. Combs, regarding the Department's current position on whether a local school district must or may file a request for a due process hearing to attempt to force a child to return to the district's special education program when the parent revokes consent for the child's receipt of special education and related services.

○ Letter dated August 15, 2007 to Massachusetts Bureau of Special Education Appeals Director Richard E. Connelly, clarifying the obligation of a public agency to provide, at no cost, a copy of a written, or at the option of the parent, an electronic, verbatim record from a due process hearing, even though the applicable appeal period has expired.

○ Letter dated September 11, 2007 to Puerto Rico Special Education Attorney Roberto Maldonado, clarifying that any party to a due process hearing has the right to either a free copy of a written, or at the option of the parents, an electronic, verbatim record of the hearing, not both.

Topic Addressed: Maintenance of Current Educational Placement

○ Letter dated September 4, 2007 to Partnership for Children's Rights Attorney Michael D. Hampden, clarifying the applicability of the requirement regarding a child's status during the pendency of administrative or judicial proceedings in a single tier or two-tier due process system when no subsequent appeals are filed.

Topic Addressed: Protections for Children Not Yet Eligible for Special Education and Related Services

○ Letter dated September 5, 2007 to individual (personally identifiable information redacted), clarifying whether an expulsion hearing may occur before the hearing officer determines whether the LEA had knowledge that the child was a child with a disability.

Part C—Infants and Toddlers With Disabilities

Section 636—Individualized Family Service Plan

Topic Addressed: Content of Plan

○ Letter dated September 4, 2007 to Florida Early Steps Bureau Chief Janice M. Kane, clarifying the State's obligation to provide any services that meet the Part C definition of early intervention

services through an individualized family service plan (IFSP).

○ Letter dated September 24, 2007 to individual (personally identifiable information redacted), clarifying that the IFSP Team, which includes the child's parents, makes an individualized determination of whether a particular method of providing services is needed for a child to achieve the outcomes in the child's IFSP.

Other Letters That Do Not Interpret Idea But May Be of Interest to Readers

Topic Addressed: Transition

○ Rehabilitation Services Administration Information Memorandum RSA–IM–07–08, regarding a comprehensive transition program that uses a variety of activities and innovative approaches to expose transition-age youth with disabilities (ages 14 to 24) to careers in science, technology, engineering, and math and other technology-based professions.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

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Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: January 8, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–448 Filed 1–11–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC08–73–000; FERC Form 73]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

January 4, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by March 10, 2008.

ADDRESSES: Copies of sample filings can be obtained from the Commission's Web site: (*http://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by entering, in the Docket Number block, the prefix ''DO'' together with the fiscal year of the filing, followed by an asterisk (for example: DO07*), or from the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–34, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC08–73–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and choose the Documents and Filings tab, click on E-filing, then follow the instructions given. First time users will need to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the *eLibrary* link. For user assistance, contact *ferconlinesupport@ferc.gov* or 202–502–6652 (toll free at 1–866–208–3676). E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form 73 ''Oil Pipelines Service Life Data'' (OMB No. 1902–0019) is used by the Commission to establish oil pipeline property depreciation rates based on the physical properties of a pipeline's equipment. Congress gave the Commission jurisdiction over oil pipeline rates, charges and valuations in Pub. L. 103–272, sec. 60502 (1994).[1] The Commission's regulations governing FERC Form No. 73 can be found in 18 CFR § 357.3. The filing instructions are available online at *http://www.ferc.gov/docs-filing/hard-fil.asp*, under the Oil tab.

Depreciation rates are a factor in a pipeline's transportation cost of service. As such, companies are required to submit Form No. 73 when requesting Commission approval of: (1) The establishment of depreciation rates for new pipeline equipment or (2) revision of previously approved depreciation rates, when the depreciation is based on the physical properties of the pipeline company's equipment. The Commission may also request an oil pipeline to submit a Form No. 73 during a rate investigation.

On May 27, 2005, in Order No. 656, the Commission amended the Form No. 73 instructions to allow for filing on a diskette in a spreadsheet file format, eliminated the filing requirement for utility codes, which were no longer used by the Commission, and updated the filing instructions to delete references to outdated filing formats.[2]

Action: The Commission is requesting approval and three-year extension of the current expiration date. There are no changes to the information that is collected on Form 73. This is a mandatory information collection requirement.

[1] *To Revise, Codify and Enact Without Substantive Change Certain General and Permanent Laws, Related to Transportation, as Subtitles II, III, and V-X of Title 49, U.S.C., ''Transportation'', and to Make Other Technical Improvements in the Code,* 49 U.S.C. 60502 (July 5, 1994). This Act repealed the Department of Energy Act sections 306 and 402 under which the Interstate Commerce Commission transferred to, and vested, in the Commission all functions and authority over rates or charges for the transportation of oil by pipeline including the establishment of valuations of any such pipeline, Pub. L. 95–91 (August 4, 1977).

[2] Revision of FERC Form No. 73, Oil Pipeline Data Filing Instructions, Order No. 656, 70 FR 34343 (June 14, 2005), FERC Statutes and Regulations, Regulations Preambles 2001–2005 ¶ 31,183(2005).

Burden Statement: Public reporting burden for this collection is estimated as follows:

Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1) × (2) × (3)
2	1	40	80

The estimated total cost to respondents is $4,861 (80 hours divided by 2,080 hours per employee [3] per year times $126,384 [4] per year average salary per employee equals $4,861 (rounded)). The estimated cost of filing Form 73 per respondent is $2,431.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) 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) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology e.g. permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–402 Filed 1–11–08; 8:45 am]

BILLING CODE 6717–01–P

[3] Number of hours an employee works per year.

[4] Average annual salary per employee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–48–000; Docket No. CP91–50–004]

Puget Sound Energy, Inc.; SOCCO, Inc. Sumas Pipeline Company; Sumas Cogeneration Company, L.P.; Notice of Application To Transfer Natural Gas Act Section 3 Authorization and Presidential Permit

January 4, 2008.

On December 21, 2007, Puget Sound Energy, Inc. (Puget), SOCCO, Inc. (SOCCO), Sumas Pipeline Company (SPC), and Sumas Cogeneration Company, L.P. (SCCLP) (collectively, the Applicants) filed an application pursuant to section 3 of the Natural Gas Act (NGA) and section 153 of the Commission's Regulations and Executive Order No. 10485, as amended by Executive Order No. 12038, and the Secretary of Energy's Delegation Order No. 00–004.00A, effective May 16, 2006, seeking authorization to transfer SCCLP's existing NGA section 3 authorization and Presidential Permit to Puget, SOCCO, and SPC, all as more fully set forth in the application which is on file with the Commission and open to the public for inspection. This filing is available for review at the Commission 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the application may be directed to: Pamela J. Anderson, Attorney for Puget Sound Energy, Inc., Van Ness Feldman, PC, 719 Second Avenue, Suite 1150, Seattle, Washington 98112, or call (206) 623–9372; or Matthew M. Schreck, Attorney for SOCCO, Inc., Sumas Pipeline Company, and Sumas Cogeneration Company, L.P., Corbett & Schreck, P.C., 9525 Katy Freeway, Suite 420, Houston, Texas 77024, or call (713) 444–6687.

Specifically, SCCLP, Puget, SOCCO, and Sumas, and Sword request the Commission to issue an order: (1) Transferring SCCLP's NGA section 3 authorization to Puget, SOCCO, and Sumas for the operation and maintenance of facilities for the importation of natural gas from the Province of British Columbia, Canada, into Whatcom County, Washington; and (2) authorizing the assignment of SCCLP's May 1, 1991, as subsequently amended, Presidential Permit for the operation and maintenance of facilities at the British Columbia, Canada/Washington import point.

The import facilities consist of (1) an interconnection with Westcoast Energy, Inc., at the international border between Canada and the United States, and (2) an 8-inch diameter pipeline located directly south of the Sumas gas meter station that crosses the Canada-United States border near or within the City of Sumas in Whatcom County, extending a distance of approximately 3.79 miles. The 8-inch diameter pipeline interconnects with the Sumas tie-in station at the 125-megawatt gas-fired Sumas cogeneration power plant owned and operated by SCCLP.

Applicants state that the border facilities will remain in place and operation following the requested transfer and assignment. Applicants also state that they are not proposing to construct and operate any new facilities. Applicants further state that there are no current third party service agreements associated with the facilities, service has not been offered to the public, and that the import and transportation of Canadian natural gas would be solely

for use by the Applicants' (owners) respective facilities.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: January 25, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–398 Filed 1–11–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–49–000]

Distrigas of Massachusetts Corporation; Notice of Application for Abandonment of Sales Services

January 4, 2008.

Take notice that on December 19, 2007, Distrigas of Massachusetts LLC (DOMAC), One Liberty Square, 10th Floor, Boston, Massachusetts 02109, filed an application under section 3 and section 7 of the Natural Gas Act (NGA) to obtain authorization: (1) For the abandonment of services provided pursuant to DOMAC's FERC Gas Tariff, First Revisited Volume No. 1 (Tariff) and under DOMAC's amended certificate of public convenience and necessity; (2) for the cancellation of DOMAC's Tariff, including all of its rate schedules contained therein; and (3) to retain certain existing rate and service terms now applicable to its liquid sales only pursuant to section 3 of the NGA based upon the Commission's acceptance of their Terms of Liquid Service; to become applicable to liquid sales upon such approval.

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

Any questions regarding this filing should be directed to Mr. Robert A. Nailling, Vice President, General Counsel and Secretary, Distrigas of Massachusetts LLC, One Liberty Square, 10th Floor, Boston, Massachusetts 02109, or Phone: (617) 526–8300.

DOMAC states that it purchases liquefied natural gas (LNG) imported by Distrigas LLC from various international sources. Distrigas LLC is a corporate affiliate of DOMAC. DOMAC then resells the LNG in vapor and liquid form to its customers located throughout the northeastern United States. DOMAC's customers include local distribution companies, gas marketers, and end-users, including electric power generation plants. DOMAC proposes to continue to make such sales of LNG in liquid and vapor form subject only to the Commission's jurisdiction under section 3 of the NGA, as amended by the Energy Policy Act of 2005. DOMAC proposes that sales of vaporized LNG will be under flexible, negotiate contracts with market-responsive terms not subject to the Commission's jurisdiction. However, DOMAC proposes a Statement of Terms and Conditions for Liquid Service incorporating terms and conditions from the current Tariff, to apply only to liquid sales. DOMAC requests that the proposed abandonment of such sales pursuant to its amended certificate under section 7 of the NGA and the Terms of Liquid Service be effective as of April 1, 2008.

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

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

Comment Date: January 25, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–399 Filed 1–11–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

January 3, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–28–000.

Applicants: Lehman Brothers Commodity Services, Inc.; Eagle Energy Partners I, LP.

Description: Lehman Brothers Commodity Services, Inc's et al. application for authorization for disposition of jurisdictional facilities and request for expedited action.

Filed Date: 12/26/2007.

Accession Number: 20071228–0115.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 16, 2008.

Docket Numbers: EC08–29–000.

Applicants: APX, Inc.

Description: APX, Inc. submits an application for authorization for disposition of jurisdictional facilities and request for expedited action.

Filed Date: 12/21/2007.

Accession Number: 20071228–0117.

Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–28–000.

Applicants: Waterbury Generation, LLC.

Description: Waterbury Generation, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/20/2007.
Accession Number: 20071228–0002.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2251–007; ER99–2252–008; ER97–705–018; ER02–2080–007; ER02–2546–008; ER99–3248–010; ER99–1213–008; ER01–1526–008.
Applicants: Consolidated Edison Company of New York, Inc.; Orange & Rockland Utilities, Inc.; Consolidated Edison Solutions, Inc.; Ocean Peaking Power, LLC; CED Rock Springs, Inc.; ConEdison Energy Massachusetts, Inc.; Lakewood Cogeneration LP; Newington Energy, L.L.C.
Description: Consolidated Edison Company of New York, Inc *et al.* submits market based rate tariffs.
Filed Date: 12/20/2007.
Accession Number: 20071228–0061.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER02–1173–004; ER02–1336–004; ER06–1265–001.
Applicants: Front Range Power Company, LLC; Vandolah Power Company, LLC; Orlando Cogen LTD LP.
Description: Front Range Power Co, LLC *et al.* submits a supplement to the Notice of Non-Material Change in Status.
Filed Date: 12/21/2007.
Accession Number: 20071227–0196.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER02–305–006.
Applicants: Condon Wind Power, LLC.
Description: Condon Wind Power, LLC submits an amendment to its 11/9/07 filing of a non-material change in status resulting from new affiliations by one of its upstream parent companies.
Filed Date: 12/21/2007.
Accession Number: 20071227–0194.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER03–774–006.
Applicants: Eagle Energy Partners I, LP.
Description: Eagle Energy Partners I, LP submits a Notice of Non-Material Change in Status.
Filed Date: 12/21/2007.
Accession Number: 20071228–0054.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER03–1207–006.
Applicants: AES Delano, Inc.; Covanta Delano, Inc.
Description: Covanta Delano, Inc. submits First Revised Sheet 1 to FERC Electric Tariff, First Revised Volume 1, to be effective 12/26/07.
Filed Date: 12/26/2007.
Accession Number: 20071228–0055.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 16, 2008.

Docket Numbers: ER04–835–009.
Applicants: California Independent System Operator Corporation.
Description: The California Independent System Operator Corp in compliance with FERC's Order on Rehearing issued on 11/20/07 submits revisions to the CAISO Tariff re the use of the Must-Offer Obligation etc.
Filed Date: 12/20/2007.
Accession Number: 20080102–0264.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER05–1420–005.
Applicants: Lehman Brothers Commodity Services Inc.
Description: Lehman Brothers Commodity Services, Inc. submits a Notice of Non-Material Change in Status.
Filed Date: 12/21/2007.
Accession Number: 20071228–0056.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER05–717–007; ER05–721–007; ER04–374–007; ER99–2341–009; ER06–230–004; ER06–1334–004; ER07–277–002; ER07–810–001.
Applicants: Spring Canyon Energy LLC; Judith Gap Energy LLC; Invenergy TN LLC; Hardee Power Partners LTD; Wolverine Creek Energy LLC; Spindle Hill Energy LLC; Invenergy Cannon Falls LLC; Grays Harbor Energy LLC.
Description: Spring Canyon Energy LLC et al submits a joint notice of change in status under the market-based rate authority and revised tariffs in compliance with Order 697.
Filed Date: 12/21/2007.
Accession Number: 20071228–0062.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER07–93–001.
Applicants: Entergy Services, Inc.; Entergy Services Inc.
Description: Entergy Services, Inc. on behalf of Entergy Operating Companies submits a refund report.
Filed Date: 12/20/2007.
Accession Number: 20071228–0066.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER07–1199–001.
Applicants: Airtricity Munnsville Wind Farm, LLC.
Description: Airtricity Munnsville Wind Farm, LLC's response to FERC Staff's request to re-format certain tariff sheets submitted with their 11/30/07 Notice of Change in Status.
Filed Date: 12/20/2007.
Accession Number: 20071227–0195.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER07–1267–001.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Co. submits a compliance filing of the Operation and Maintenance Agreement with Southwest Transmission Cooperative, Inc for the Round Valley Substation.
Filed Date: 12/21/2007.
Accession Number: 20071228–0063.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER07–371–004.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits a compliance filing containing a modification to Schedule 2 of its OATT.
Filed Date: 12/20/2007.
Accession Number: 20071228–0057.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER07–527–002.
Applicants: Longview Fibre Paper and Packaging, Inc.
Description: Longview Fibre Paper and Packaging, Inc. submits an amendment to its 11/30/07 filing of a Notice of Non-Material Change in Status.
Filed Date: 12/21/2007.
Accession Number: 20071228–0050.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08–14–002.
Applicants: Alpha Domestic Power Trading, L.L.C.
Description: Alpha Domestic Power Trading, LLC submits Substitute Original Sheet 1 to FERC Electric Tariff, Original Volume 1 effective 10/8/07.
Filed Date: 12/20/2007.
Accession Number: 20071228–0059.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER08–241–001.
Applicants: Consolidated Water Power Company.
Description: Consolidated Water Power Co. submits a Service Agreement for Wholesale Distribution Service with the City of Wisconsin Rapids, WI.
Filed Date: 12/21/2007.
Accession Number: 20071228–0060.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08–284–001.
Applicants: Argo Navis Fundamental Power Fund, L.P.
Description: Argo Navis Fundamental Power Fund, LP requests acceptance of FERC Electric Tariff, Original Vol 1.

Filed Date: 12/20/2007.
Accession Number: 20071228–0058.
Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER08–326–001.
Applicants: Lehigh Capital, LLC.
Description: Lehigh Capital, LLC submits an amendment to the 12/08//07 application for authorization to sell power and energy at market-based rates.
Filed Date: 12/27/2007.
Accession Number: 20071228–0065.
Comment Date: 5 p.m. Eastern Time on Thursday, January 17, 2008.

Docket Numbers: ER08–363–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits an Executed Interconnection Construction Service Agreement with James River Cogeneration Co. *et al.*
Filed Date: 12/21/2007.
Accession Number: 20071227–0201.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08–367–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp's filing of Fourth Replacement Version of FERC Electric Tariff.
Filed Date: 12/21/2007.
Accession Number: 20071227–0159.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08–375–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison submits Second Revised Sheet 3 *et al.* to FERC Electric Tariff, Second Revised Volume 6, to be effective 3/1/08.
Filed Date: 12/21/2007.
Accession Number: 20071228–0067.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08–376–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits revisions to the PJM Credit Policy Attachment Q.
Filed Date: 12/26/2007.
Accession Number: 20071228–0049.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 16, 2008.

Docket Numbers: ER08–377–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with Winnebago Energy Center *et al.*
Filed Date: 12/26/2007.
Accession Number: 20071228–0051.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 16, 2008.

Docket Numbers: ER08–378–000.
Applicants: Covanta Delano, Inc.
Description: Covanta Delano, Inc submits a Notice of Succession to notify FERC of its adoption of AES Delano, Inc's Rate Schedule FERC 1.
Filed Date: 12/26/2007.
Accession Number: 20071228–0052.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 16, 2008.

Docket Numbers: ER08–379–000.
Applicants: Rensselaer Cogeneration LLC.
Description: Rensselaer Cogeneration LLC submits an application for Market-Based Rate Authority for Sales and Ancillary Services.
Filed Date: 12/26/2007.
Accession Number: 20071228–0053.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 16, 2008.

Docket Numbers: ER08–380–000.
Applicants: Sierra Pacific Power Company.
Description: Sierra Pacific Power Co. submits revisions to Exhibit F of the General Transfer Agreement with Bonneville Power Administration.
Filed Date: 12/26/2007.
Accession Number: 20071228–0064.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 16, 2008.

Docket Numbers: ER08–381–000.
Applicants: Ameren Energy Development Company.
Description: Ameren Energy Development Company submits notice of cancellation of its Power Supply Agreement with Ameren Energy Marketing Co.
Filed Date: 12/28/2007.
Accession Number: 20071231–0109.
Comment Date: 5 p.m. Eastern Time on Friday, January 18, 2008.

Docket Numbers: ER08–382–000.
Applicants: Ameren Energy Development Company.
Description: Ameren Energy Development Co. submits a notice of cancellation of its Power Sales Tariff for the Sale of Energy and Capacity at Market-Based Rates.
Filed Date: 12/28/2007.
Accession Number: 20071231–0108.
Comment Date: 5 p.m. Eastern Time on Friday, January 18, 2008.

Docket Numbers: ER08–383–000.
Applicants: Ameren Energy Generating Company.
Description: Ameren Energy Generating Co. submits a notice of cancellation of a long-term lease agreement with Ameren Energy Development Co.
Filed Date: 12/28/2007.
Accession Number: 20071231–0107.
Comment Date: 5 p.m. Eastern Time on Friday, January 18, 2008.

Docket Numbers: ER08–384–000.
Applicants: Midwest Electric Power, Inc.
Description: Midwest Electric Power, Inc. submits a Site Sub-Lease and Operation & Maintenance Agreement with Ameren Energy Generating Co.
Filed Date: 12/28/2007.
Accession Number: 20071231–0106.
Comment Date: 5 p.m. Eastern Time on Friday, January 18, 2008.

Docket Numbers: ER08–387–000.
Applicants: Atlantic Renewables Projects II LLC.
Description: Application of Atlantic Renewable Projects II LLC for Order Accepting Initial Tariff, Granting Shortened Comment Period, Waiving Regulations and Granting Blanket Approvals.
Filed Date: 12/28/2007.
Accession Number: 20071231–0105.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08–388–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits a letter agreement for Losses with Bonneville Power Administration.
Filed Date: 12/28/2007.
Accession Number: 20071231–0104.
Comment Date: 5 p.m. Eastern Time on Friday, January 18, 2008.

Docket Numbers: ER08–390–000.
Applicants: NorthWestern Corporation; Montana Generation LLC.
Description: Montana Generation LLC and NorthWestern Corporation's market based Power Purchase Agreement.
Filed Date: 12/28/2007.
Accession Number: 20071228–5051.
Comment Date: 5 p.m. Eastern Time on Friday, January 18, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–62–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits their compliance filing pursuant to FERC's Order 890.
Filed Date: 12/21/2007.
Accession Number: 20071228–0116.
Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern

time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis,

Deputy Secretary.

[FR Doc. E8–408 Filed 1–11–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

January 4, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–29–000.

Applicants: Bicent (California) Malburg LLC.

Description: Bicent (California) Malburg LLC submits a notice of self-certification as a exempt wholesale generator.

Filed Date: 12/31/2007.

Accession Number: 20080103–0097.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 22, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–2173–006. ER00–3219–006; ER01–1300–007.

Applicants: Northern Indiana Public Service Company; EnergyUSA–TPC Corp.; Whiting Clean Energy, Inc.;

Description: Northern Indiana Public Service Company, Whiting Clean Energy, Inc et al. submit Original Sheet 1 et al. to FERC Electric Tariff, Original Volume 3 in compliance with Commission's order issued 11/30/07.

Filed Date: 12/28/2007.

Accession Number: 20080102–0091.

Comment Date: 5 p.m. Eastern Time on Friday, January 18, 2008.

Docket Numbers: ER03–329–008; ER07–597–003.

Applicants: NorthWestern Corporation; Montana Generation, LLC.

Description: NorthWestern Corp and Montana Generation, LLC submits a non-material change in status, in compliance with the reporting requirements adopted in Order 652.

Filed Date: 12/31/2007.

Accession Number: 20080103–0094.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 22, 2008.

Docket Numbers: ER07–1250–002.

Applicants: PowerGrid Systems, Inc.

Description: PowerGrid Systems, Inc submits a transmittal letter regarding information requested by the Commission.

Filed Date: 12/21/2007.

Accession Number: 20071221–5149.

Comment Date: 5 p.m. Eastern Time on Friday, January 11, 2008.

Docket Numbers: ER08–360–001.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits an errata to its 12/21/07 filing of an Amended Rate Schedule 10A.

Filed Date: 12/31/2007.

Accession Number: 20080103–0093.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 22, 2008.

Docket Numbers: ER08–371–001.

Applicants: Cooperative Energy Incorporated.

Description: Cooperative Energy Incorporated submits its proposed protective order that was omitted from the 12/21/07 ''Petition for Authority to Sell Power at Market-Based Rates etc.

Filed Date: 12/31/2007.

Accession Number: 20080103–0092.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 22, 2008.

Docket Numbers: ER08–385–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co. submits the Agreements for Wholesale Distribution Service and Interconnection with McAllister Ranch Irrigation District.

Filed Date: 12/28/2007.

Accession Number: 20071231–0141.

Comment Date: 5 p.m. Eastern Time on Friday, January 18, 2008.

Docket Numbers: ER08–386–000.

Applicants: Potomac-Appalachian Transmission Highline, LLC.

Description: Potomac-Appalachian Transmission Highline, LLC *et al.,* submits Seventh Revised Sheet 26A *et al.* to FERC Electric Tariff, Sixth Revised Volume 1, effective 3/1/08.

Filed Date: 12/28/2007.

Accession Number: 20080102–0086.

Comment Date: 5 p.m. Eastern Time on Friday, January 18, 2008.

Docket Numbers: ER08–389–000.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Co. submits Third Revised Sheet 36 *et al.* to FERC Electric Tariff, Original Volume 11, to be effective 1/1/08.

Filed Date: 12/28/2007.

Accession Number: 20071231–0142.

Comment Date: 5 p.m. Eastern Time on Friday, January 18, 2008.

Docket Numbers: ER08–393–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC submits an executed interconnection service agreement & an executed interconnection construction service agreement with James River Cogeneration Company *et al.*

Filed Date: 12/28/2007.

Accession Number: 20080103–0176.

Comment Date: 5 p.m. Eastern Time on Thursday, January 10, 2008.

Docket Numbers: ER08–398–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits Service Agreements for Wholesale Distribution Service and three Interconnection points and an Interconnection Agreement with Power and Water Resources Pooling Authority.

Filed Date: 12/31/2007.

Accession Number: 20080102–0090.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 22, 2008.

Docket Numbers: ER08–402–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas and Electric Company submits change in rates for the Transmission Revenue Balancing Account Adjustment and its Transmission Access Charge Balancing Account Adjustment.
Filed Date: 12/31/2007.
Accession Number: 20080102–0118.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 22, 2008.

Docket Numbers: ER08–403–000.
Applicants: Duke Energy Kentucky, Inc.
Description: Duke Energy Kentucky, Inc submits an unexecuted Wholesale Distribution Service Agreement with the City of Williamstown, Kentucky.
Filed Date: 12/31/2007.
Accession Number: 20080103–0095.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 22, 2008.

Docket Numbers: ER08–404–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its Open Access Transmission and Energy Markets Tariff.
Filed Date: 12/31/2007.
Accession Number: 20080103–0096.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 22, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E8–409 Filed 1–11–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–457–000]

Iroquois Gas Transmission System, L.P.; Notice of Availability of the Environmental Assessment for the Proposed Iroquois 08/09 Expansion Project

January 4, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas facilities proposed by Iroquois Gas Transmission System, L.P. (Iroquois) in the above-referenced docket. The Iroquois 08/09 Expansion Project would expand Iroquois' existing system to deliver up to 200,000 dekatherms per day of natural gas transportation service to KeySpan Gas East Corporation at South Commack, Long Island.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act of 1969. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of Iroquois' proposed 08/09 Expansion Project. Iroquois proposes to construct its project in three phases which would consist of: looping [1] its existing pipeline system at three locations in New York and Connecticut by November 1, 2008 (Phase 1); constructing a new compressor station in Milford, Connecticut with 20,620 horsepower of compression by January 1, 2009 (Phase 2); and adding a 10,310 horsepower compressor unit to Iroquois' Brookfield Compressor Station in Brookfield, Connecticut by November 1, 2009 (Phase 3).[2]

The Phase 1 pipeline looping would include construction of 5.8 miles of 36-inch-diameter pipeline in Boonville, New York; 1.0 miles of 36-inch-diameter pipeline in Wright, New York; and 1.6 miles of 36-inch-diameter pipeline in Newtown, Connecticut. The new pipeline segments would be located adjacent to Iroquois' existing pipeline at these locations.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP07–457–000;

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[1] A loop is a segment of pipeline that is usually installed to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[2] The Brookfield Compressor Station was approved by the Commission on December 21, 2006, as part of Iroquois' Market Access Project in Docket No. CP02–31–002. Construction of the Brookfield Compressor Station commenced in the October 2007 and operation of the station is scheduled to commence in the fall of 2008.

• Label one copy of the comments for the attention of the Gas Branch 1, PJ–11.1; and

• Mail your comments so that they will be received in Washington, DC on or before February 4, 2008.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created on-line.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–397 Filed 1–11–08; 8:45 am]

BILLING CODE 6717–01–P

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–427–000]

PetroLogistics Natural Gas Storage, LLC; Notice of Availability of the Environmental Assessment for the Proposed Petrologistics Gas Storage Project

January 4, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the natural gas pipeline facilities proposed to be constructed by PetroLogistics Natural Gas Storage, LLC (PetroLogistics) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act of 1969. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of constructing and operating:

• One 20,000-horsepower electric compressor station on a 2-acre site;

• One 350-foot-long 24-inch-diameter interconnect pipeline;

• 7.3 miles of 24-inch-diameter natural gas header pipeline connecting the compressor station and the Florida Gas Transmission Company (FGT), CrossTex LIG Pipeline Company (Crosstex)/Bridgeline Pipeline System (Bridgeline) and Texas Eastern Transmission Company (TETCO) interconnects;

• 5.83 miles of 16-inch-diameter interconnect pipeline from the Bridgeline/CrossTex tie-in to the Southern Natural Gas Company (SONAT) pipeline interconnect;

• A 0.60-mile-long TETCO 16-inch-diameter lateral from near the terminus of the 24-inch-diameter header pipeline to the TETCO Lateral Meter Station;

• Five meter stations/interconnects (FGT, Bridgeline, Crosstex, TETCO and SONAT Meter Stations) and two mainline valves; and

• The recasing of the existing non-jurisdictional Well No. 25.

The purpose of the proposed project is to build and operate a high-deliverability, multi-cycle natural gas storage facility and appurtenant facilities in an existing brine cavern within the Choctaw Salt Dome located 4 miles northwest of the City of Plaquemine, Louisiana.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your comments to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

• Label one copy of the comments for the attention of the Gas Branch 2, PJ11.2.

• Reference Docket No. CP07–427–000; and

• Mail your comments so that they will be received in Washington, DC on or before February 5, 2008.

Please note that the Commission strongly encourages the electronic filing (''eFiling'') of comments. Instructions on how to ''eFile'' comments can be found on the Commission's Web site at *http://www.ferc.gov* under the ''Documents and Filings'' link.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Anyone may intervene in this proceeding based on this Draft EA. Only intervenors have the right to seek rehearing of the Commission's decision. You must file your request to intervene

as specified above.[1] You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. The ''eLibrary'' link provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. For assistance with ''eLibrary'', please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. To learn more about eSubscription and to sign-up for this service please go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–396 Filed 1–11–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF07–11–000]

North Baja Pipeline, LLC; Notice of Intent to Prepare an Environmental Assessment for the Proposed Yuma Lateral Project and Request for Comments on Environmental Issues

January 4, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed Yuma Lateral Project involving construction and operation of natural gas facilities by North Baja Pipeline, LLC (North Baja) in Yuma County, Arizona. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on February 4, 2008. Details on how to submit comments are provided in the Public Participation section of this notice.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. North Baja would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, North Baja could initiate condemnation proceedings in accordance with state law.

This notice is being sent to affected landowners; federal, state, and local government representatives and agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and to encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

The Yuma Lateral Project would involve construction of approximately 3.3 miles of 12-inch-diameter pipeline from the international border at the Colorado River to the Yucca Power Plant, also in Yuma County, Arizona. An additional 3.1 miles would be constructed in Mexico. A meter station would be constructed at the Yucca Power Plant along with a pig receiver. The majority of the Yuma Lateral would be constructed on public lands, primarily a Bureau of Reclamation (BOR) canal right-of-way (ROW). The majority of the proposed pipeline ROW route is co-located immediately adjacent to an existing railroad ROW.

The purpose of the proposed project is to provide the Yucca Power Plant with access to existing and future power generation needs. Gas would be shipped from Sempra's Gasoducto Bajanorte pipeline through a new 3.1-mile-long lateral in Mexico to the international border, from which 81,250 Dth/day of gas would be shipped via the Yuma Lateral to supply the Yucca Power Plant.

The general location of the proposed project is shown in Appendix 1.[1]

Land Requirements for Construction

Construction of the proposed project would affect a total of about 29.5 acres during construction. Following construction, about 21.0 acres would be allowed to revert to its previous conditions. Disturbance associated with aboveground facilities would permanently impact 0.5 acre of land.

North Baja proposes a typical construction ROW for the proposed pipeline of between 52 and 80 feet, which is 32 to 60 feet of temporary workspace and 20 feet of permanent ROW.

The EA Process

We[2] are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impact that could result if it authorizes North Baja's proposal. By this notice, we are also asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, we are requesting public comments on the scope of the issues to address in the EA. All

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[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

[1] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference Room at (202) 502–8371. For instructions on connecting to eLibrary, refer to the ''Additional Information'' section at the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the well locations and other proposed facilities should be made directly to North Baja.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

comments received will be considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- wetlands and waterbodies
- land use
- cultural resources
- vegetation and wildlife (including sensitive species)
- air and noise quality

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under its Pre-filing Process. The purpose of the Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. Once a formal application is filed with the FERC, a new docket number will be established.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, reasonable alternatives to the proposal including alternative locations and routes, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberley D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St. NE.; Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1.
- Reference Docket No. PF07–11–000.
- Mail your comments so that they will be received in Washington, DC on or before February 4, 2008.

The Commission encourages electronic filing of comments. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Once North Baja formally files its application with the Commission, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–395 Filed 1–11–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance at Midwest ISO Meetings

January 4, 2008.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following Midwest ISO-related meetings:

- Advisory Committee (10 a.m.–4 p.m., EST)
  - January 16
  - February 20
  - March 12
  - May 14
  - June 18
  - July 16
  - August 20 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - September 17
  - October 15
  - November 19
  - December 10
- Board of Directors (8:30 a.m.–10 a.m., EST)
  - January 17
  - March 13
  - April 17
  - June 19
  - August 21 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - October 16
  - December 11
- Board of Directors Markets Committee (8 a.m.–10 a.m., EST)
  - March 12
  - May 14
  - June 18
  - July 16
  - August 20 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - September 17
  - October 15
  - November 19
  - December 10
- Midwest ISO Informational Forum (3 p.m.–5 p.m., EST)
  - January 15
  - February 19

- March 11
- April 15
- May 13
- June 17
- July 15
- August 19 (St. Paul Hotel, 350 Market St., St. Paul, MN)
- September 16
- October 14
- November 18
- December 9

- Midwest ISO Market Subcommittee (9 a.m.–5 p.m., ET)
  - January 8
  - February 5
  - March 4
  - April 1
  - May 6
  - June 3
  - July 8
  - August 5
  - September 9
  - October 7
  - November 5
  - December 2

Except as noted, all of the meetings above will be held at: Midwest ISO Headquarters, 701 City Center Drive, 720 City Center Drive, and 630 West Carmel Drive, Carmel, IN 46032.

- Fourth Annual Midwest ISO Stakeholders' Meeting (10 a.m.–5 p.m., EST)
  - April 16 (University Place Hotel & Conference Center, 850 West Michigan Street, Indianapolis, IN 46202)

Further information may be found at *http://www.midwestiso.org.*

The above-referenced meetings are open to the public.

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

Docket No. ER02–488, *Midwest Independent Transmission System Operator, Inc.*

Docket Nos. ER02–2595, *et al.*, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER04–375, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket Nos. ER04–458, *et al.*, *Midwest Independent Transmission System Operator, Inc.*

Docket Nos. ER04–691, EL04–104 and ER04–106, *et al.*, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER05–6, *et al.*, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER05–636, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER05–752, *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*

Docket No. ER05–1083, *et al.*, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER05–1085, *et al.*, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER05–1138, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER05–1201, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER05–1230, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL05–103, *Northern Indiana Power Service Co.* v. *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*

Docket No. EL05–128, *Quest Energy, L.L.C.* v. *Midwest Independent Transmission System Operator, Inc.*

Docket Nos. RM05–25 and RM05–17, *Preventing Undue Discrimination and Preference in Transmission Service.*

Docket Nos. ER06–18, *et al.*, *Midwest Independent Transmission System Operator, Inc.*

Docket Nos. EC06–4 and ER06–20, *LGE Energy LLC, et al.*

Docket No. ER06–22, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–27, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER06–56, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–192, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–360, *et al.*, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER06–356, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–532, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–731, *Independent Market Monitor for the Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–1420, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–1552, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL06–31, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. EL06–49, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. EL06–80, *Midwest Independent Transmission System Operator, Inc.*

Docket No. AD06–9, *Comments on the Technical Conference on Seams Issues for RTOs and ISOs in the Eastern Interconnection.*

Docket No. RM06–16, *Mandatory Reliability Standards for Bulk-Power System.*

Docket No. RM06–22, *Reliability Standard Compliance and Enforcement in Regions with Independent System Operators and Regional Transmission Organizations.*

Docket No. ER07–478, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–532, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–815, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–940, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER07–1141, *International Transmission Co., et al.*

Docket No. ER07–1144, *American Transmission Co. LLC, et al.*

Docket No. ER07–1182, *Midwest Independent Transmission System Operator, Inc.*

Docket Nos. ER07–1233 and ER07–1261, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–1372, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–1388, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER07–1417, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. EL07–44, *Dakota Wind Harvest, LLC* v. *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. EL07–79, *Midwest Independent Transmission System Operator, Inc.*

Docket Nos. EL07–86, EL07–88, EL07–92, *Ameren Services Co., et al.* v. *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. EL07–100, *E.ON U.S. LLC* v. *Midwest Independent Transmission System Operator, Inc.*

Docket No. RM07–3, *Facilities Design, Connections and Maintenance Reliability Standards.*

Docket Nos. RM07–19 and AD07–7, *Wholesale Competition in Regions with Organized Electric Markets.*

Docket Nos. RR07–2, *et al., Delegation Agreement Between the North American Electric Reliability*

Corporation and Midwest Reliability Organization, et al.

Docket No. AD07–12, *Reliability Standard Compliance and Enforcement in Regions with Independent System Operators and Regional Transmission Organizations.*

Docket No. OA07–57, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER08–15, *Midwest ISO Transmission Owners.*

Docket No. ER08–55, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER08–109, *Midwest Independent Transmission System Operator, Inc.*

Docket Nos. ER08–185 and ER08–186, *Ameren Energy Marketing Company, et al.*

Docket No. ER08–207, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER08–209, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER08–269, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER08–296, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER08–394, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER08–404, *Midwest Independent Transmission System Operator, Inc.*

Docket No. OA08–4, *Midwest ISO Transmission Owners, et al.*

Docket No. OA08–14, *Midwest Independent Transmission System Operator, Inc.*

Docket No. OA08–42, *Midwest Independent Transmission System Operator, Inc.*

Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*

For more information, contact Patrick Clarey, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov,* or Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–403 Filed 1–11–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–30–000]

City of Vernon, CA; Notice of Filing

January 4, 2008.

Take notice that on December 31, 2007, the City of Vernon, California filed revisions to its Transmission Revenue Balancing Account Adjustment, to become effective January 1, 2008.

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

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

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

Comment Date: 5 p.m. Eastern Time on January 30, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–400 Filed 1–11–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–31–000]

Westar Energy, Inc.; Notice of Filing

January 4, 2008.

Take notice that on December 28, 2007, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (2007), section 1241 of the Energy Policy Act of 2005, which adds new section 219 of the Federal Power Act, and Order No. 679, Westar Energy, Inc. filed a ''Petition for Declaratory Order to Confirm Incentive Rate Treatment for High Voltage Transmission Projects.''

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

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

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

Comment Date: 5 p.m. Eastern Time on January 28, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–401 Filed 1–11–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD08–3–000]

Conference on Alaska Natural Gas Transportation Project; Notice of Technical Conference and Request for a Statement of Interest Regarding an Alaska Natural Gas Transportation Project

January 4, 2008.

On January 29, 2008, the staff of the Federal Energy Regulatory Commission (FERC or Commission) will hold a technical conference to discuss its third-party contracting requirements and expectations with respect to preparing an environmental impact statement (EIS) on an Alaska natural gas transportation project. The staff invites those contracting companies with the relevant expertise and an interest in providing third-party contractor services to assist the FERC environmental staff with the review of the application(s) and the design and preparation of an EIS staff will prepare for the anticipated project.

The technical conference will be held at the Commission's Headquarters, 888 First St., NE., Washington, DC 20426 in room 3M–2A from 10 a.m. until 12 p.m. EST. All interested parties may attend. The conference will not be transcribed, and telephone participation will not be available.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

If a project moves forward and starts the Pre-Filing Process to seek authorization under the Natural Gas Act, the FERC will be the lead agency for complying with the National Environmental Policy Act of 1969 (NEPA) and for preparing an EIS that consolidates the environmental review of all federal agencies with regulatory and other responsibilities relevant to such a project. In particular, the staff is interested in information and ideas regarding how a consultant would assist it with:

- Planning and supporting the public participation process;
- coordinating the information flow between the lead and cooperating agencies;
- identifying and analyzing the environmental issues associated with a large diameter trans-Alaskan pipeline project; and
- preparing an EIS that is in full compliance with NEPA.

In addition to the technical conference, the staff is seeking Statements of Interest from qualified companies. Respondents to this Request for Statement of Interest (RSI) should also submit a Capability Statement (CS) of no more than 25 pages that describes the organization's ability to perform the effort outlined above. The CS should summarize the company's experience in projects of similar scope and complexity, prior NEPA experience, and familiarity with the FERC (especially third-party contract experience). The CS should also detail the company's relevant expertise in such fields as arctic pipeline construction and restoration, pipeline engineering, geotechnical and seismic design, subsistence, and Native Alaskan consultation. The CS may be appended with the qualifications of the key personnel on the project team. In addition to the CS, respondents must include a completed Organizational Conflict of Interest Statement (see attachment).

Responses to the RSI must be submitted as detailed below:

- Send two copies to: Michael J. Boyle, Branch Chief, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Room 62–47, Washington, DC 20426;
- reference ''Alaska Natural Gas Transportation Project RSI'' on both copies; and
- mail the response so that it will be received in Washington, DC, on or before January 25, 2008.

Be advised that all information submitted should be marked as ''Proprietary Information—Do Not Release'' in bold letters on the top of every page in order to protect the submittal from public disclosure. Companies responding to the RSI may also be interviewed individually at the Commission's offices in Washington, DC. If such interviews are scheduled, attendance would be at the interested parties' own expense.

For additional information concerning the technical conference or the RSI, please contact Laurence Sauter at 202–502–8205 or Rich McGuire at 202–502–6177.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–404 Filed 1–11–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0058; FRL–8516–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Transition Program for Equipment Manufacturers (Renewal); EPA ICR No. 1826.04, OMB Control No. 2060–0369

AGENCY: Environmental Protection Agency.

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 February 13, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0058, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to a-and-r-*Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air 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: Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 6403J, Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; e-mail address: *reyes-morales.nydia@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 September 26, 2007 (72 *FR* 54654), 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–2004–0058, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air 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 Docket is 202–566–1742.

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: Transition Program for Equipment Manufacturers (Renewal)

ICR Numbers: EPA ICR No. 1826.04, OMB Control No. 2060–0369.

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, 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: When EPA establishes new regulations with tighter engine emission standards, engine manufacturers often need to change the design of their engines to achieve the required emissions reductions. Consequently, original equipment manufacturers (OEMs) may also need to redesign their products to accommodate these engine design changes. Sometimes, OEMs have trouble making the necessary adjustments by the effective date of the regulations. In an effort to provide OEMs with some flexibility in complying with the regulations, EPA created the Transition Program for Equipment Manufacturers (TPEM). Under this program, OEMs are allowed to delay compliance with the new standards for up to seven years as long as they comply with certain limitations. Participation in the program is voluntary. Participating OEMs and engine manufacturers who provide the noncompliant engines are required to keep records and submit reports of their activities under the program.

In 2008, a new TPEM phase will start as the new, nonroad compression-ignition emission regulations (also known as Tier 4 regulations) become effective. This ICR Renewal incorporates the requirements that will be in effect during the active period of this supporting statement. The Tier 4 TPEM program is codified at 40 CFR Part 1039.625 while the Tier 1–Tier 3 program is codified at 40 CFR Part 89.102.

The information is collected for compliance purposes by the Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Confidentiality of proprietary information is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR 2, and class determinations issued by EPA's Office of General Counsel.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 86 hours per respondent. 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: Entities potentially affected by these actions are manufacturers of compression-ignition engines and equipment.

Estimated Number of Respondents: 99.

Frequency of Response: Annually and on occasion.

Estimated Total Annual Hour Burden: 8,547.

Estimated Total Annual Cost: $652,930, includes $123,558 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 8,522 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Burden has decreased due to a program change (new regulations). The current phase, as described in the previous ICR (the Tier 1–Tier 3 Program codified at 40 CFR Part 89), is nearing its end and a new phase with new requirements is starting in 2008 (Tier 4, 40 CFR Part 1039). Some overlap exists between the two programs. Although the new requirements impose a slightly larger burden on respondents, EPA estimates that fewer respondents will participate in the Tier 4 phase. The increase in O&M costs is due largely to foreign OEMs that must post a bond before importing their equipment ''to cover any potential enforcement actions under the Clean Air Act.''

Dated: January 8, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–442 Filed 1–11–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–OEI–2007–1144; FRL–8516–4]

Amendment to General Routine Uses

AGENCY: Environmental Protection Agency.

ACTION: Amendment to Agency's General Routine Uses.

SUMMARY: The Environmental Protection Agency is giving notice that it proposes to amend its current list of General Routine Uses to add a new routine use. The new general routine use will allow the Agency to disclose information in its systems covered under the Privacy Act to persons and entities that may be needed by the Agency to respond, prevent, minimize or remedy harm resulting from an actual or suspected breach or compromise of personally identifiable information. The Agency currently has general routine uses

A–K that are applicable to more than one of EPA's systems of records. The intent of this notice is to add general routine use ''L'' to the current list of General Routine Uses.

EFFECTIVE DATES: Persons wishing to comment on this routine use notice must do so by February 25, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2007–1144, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- E-mail: *oei.docket@epa.gov.*
- Fax: 202–566–1752.
- Mail: OEI Docket, Environmental Protection Agency, Mail code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: OEI Docket, EPA/DC, EPA West Building, 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–OEI–2007–1144. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov.* The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW, Washington. DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket Center is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Judy E. Hutt, Privacy Act Officer, U.S. Environmental Protection Agency, Office of Information Collections, Records, FOIA, and Privacy Branch (MC–2822T), Washington, DC 20460; (202) 566–1668; *Hutt.judy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

The Office of Management and Budget (OMB) requires all federal agencies to be able to quickly and efficiently respond in the event of a breach of personally identifiable information and has directed agencies to publish a routine use that will allow disclosure of Privacy Act information to persons and entities in a position to assist with notifying affected individuals or playing a role in preventing, minimizing, or remedying any harm from a breach. Accordingly, the EPA is proposing to add a new routine use that will allow it to meet the OMB objective of responding quickly and efficiently should such a breach occur. This new routine use will help the Agency prevent, minimize, or remedy a data breach or compromise. All responses to a confirmed or suspected breach will be prepared on a case-by-case basis. The purpose and intent of this routine use is to allow the Agency, when necessary, to disclose information regarding the breach to individuals identified under the routine use and to give the affected individuals full and fair notice of the extent of these potential disclosures. Accordingly, the Agency is amending its prefatory statement of general routine uses to include ''L'' as a new routine use.

A. Disclosure for Law Enforcement Purposes

Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. Disclosure Incident to Requesting Information

Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested,) when necessary to obtain information relevant to an agency decision concerning retention of an employee or other personnel action (other than hiring,) retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

C. Disclosure to Requesting Agency

Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

D. Disclosure to Office of Management and Budget

Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

E. Disclosure to Congressional Offices

Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. Disclosure to Department of Justice

Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

1. The Agency, or any component thereof;
2. Any employee of the Agency in his or her official capacity;
3. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency have agreed to represent the employee; or
4. The United States, if the Agency determines that litigation is likely to affect the Agency or any of its components,

Is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

G. Disclosure to the National Archives

Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. Disclosure to Contractors, Grantees, and Others

Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Agency and who have a need to have access to the information in the performance of their duties or activities for the Agency. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. Disclosures for Administrative Claims, Complaints and Appeals

Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

J. Disclosure to the Office of Personnel Management

Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

K. Disclosure in Connection With Litigation

Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Agency, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

L. Disclosure to Persons or Entities in Response to an Actual of Suspected Compromise or Breach of Personally Identifiable Information

Information from this system of records may be disclosed to appropriate Federal, State, or local agencies, other entities, and persons when it is suspected or confirmed that: (1) The security or confidentiality of information in the system of records has been compromised; (2) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (3) and those receiving the information are reasonably necessary to assist with the Agency's efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy any such harm.

Dated: January 4, 2008.

Molly A. O'Neill,

Assistant Administrator and Chief Information Officer.

[FR Doc. E8–445 Filed 1–11–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–8516–1]

Beaches Environmental Assessment and Coastal Health Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of 2008 BEACH Act Grants.

SUMMARY: The Beaches Environmental Assessment and Coastal Health (BEACH) Act, signed into law on October 10, 2000, amended the Clean Water Act (CWA), to incorporate provisions to reduce the risk of illness to users of the Nation's recreational waters. Section 406(b) of the CWA, as amended by the BEACH Act, authorizes the U.S. Environmental Protection Agency (EPA) to award grants to eligible States, Territories, Tribes, and local governments to develop and implement microbiological monitoring programs of coastal recreation waters, including the Great Lakes, which are adjacent to beaches or similar points of access used by the public. BEACH Act grants also develop and implement programs to notify the public of the potential exposure to disease-causing microorganisms in these waters. EPA encourages coastal and Great Lakes States and Territories to apply for BEACH Act grants for program implementation (referred to as implementation grants) to implement effective and comprehensive coastal recreation water monitoring and public notification programs. EPA also encourages coastal and Great Lakes Tribes to apply for BEACH Act grants for program development (referred to as development grants) to develop effective and comprehensive coastal recreation water monitoring and public notification programs.

DATES: States and Territories must submit applications on or before March 14, 2008. Eligible Tribes should notify the relevant Regional BEACH Act grant coordinator of their interest in applying for a grant on or before February 28, 2008. Upon receipt of a Tribe's notice of interest, EPA will establish an appropriate application deadline.

ADDRESSES: You must send your application to the appropriate Regional Grant Coordinator listed in this notice under **SUPPLEMENTARY INFORMATION**, Section VI.

FOR FURTHER INFORMATION CONTACT: Rich Healy, 1200 Pennsylvania Ave., NW., (4305T), Washington, DC 20460, 202–566–0405, *healy.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Grant Program

What Is the Statutory Authority for BEACH Act Grants?

The general statutory authority for BEACH Act grants is section 406(b) of the Clean Water Act, as amended by the BEACH Act, Public Law No. 106–284, 114 Stat. 970 (2000). It provides that ''(T)he Administrator may make grants to States and local governments to develop and implement programs for monitoring and notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public.'' CWA section 406(b)(2)(A), however, limits EPA's ability to award implementation grants only to those States, Tribes and Territories that meet certain requirements (see Section II, Funding and Eligibility, below for information on specific requirements).

What Activities Are Eligible for Funding Under the FY 2008 Grants?

In fiscal year 2008, EPA intends to award grants authorized under CWA section 406(b) to eligible States and Territories to support the implementation of coastal recreation water monitoring and public notification programs that are consistent with EPA's required performance criteria for implementation grants. Also in fiscal year 2008, EPA intends to award development grants to eligible Tribes to support the development of coastal recreation water monitoring and public notification programs that are consistent with EPA's performance criteria for grants. EPA published the required performance criteria for grants in its *National Beach Guidance and Required Performance Criteria for Grants* (EPA–823–B–02–004), on July 19, 2002. A notice of availability of the document was published in the **Federal Register** (67 FR 47540, July 19, 2002). This document can be found on EPA's Web site at *http://www.epa.gov/waterscience/beaches/grants.* Copies of the document may also be obtained by writing, calling, or e-mailing: Office of Water Resources Center, U.S. Environmental Protection Agency, Mail Code 4100T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (Phone: 202–566–1731 or e-mail: *center.water-resource@epa.gov*).

II. Funding and Eligibility

Who Is Eligible To Apply for These Implementation Grants?

Coastal and Great Lake States that meet the requirements of CWA section 406(b)(2)(A) are eligible for grants in fiscal year 2008 to implement monitoring and notification programs. The definition of the term ''State'' in CWA section 502 includes the District of Columbia, and current U.S. Territories: the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Are Local Governments Eligible for Funding?

CWA section 406(b)(2)(B) authorizes EPA to make a grant to a local government for implementation of a monitoring and notification program only if, after the one-year period beginning on the date of publication of the performance criteria (July 19, 2002), EPA determines that the State within which the local government has jurisdiction is not implementing a program that meets the requirements of CWA section 406(b), which includes a requirement that the program is consistent with the performance criteria in *National Beach Guidance and Required Performance Criteria for Grants.* Local governments may contact their EPA Regional office for further information about BEACH Act grants.

How May Tribes Apply for BEACH Act Development Grants and How Much Funding Is Available for Tribes?

Section 518(e) of the CWA authorizes EPA to treat eligible Indian Tribes in the same manner as States for the purpose of receiving CWA section 406 grant funding. For fiscal year 2008, EPA will make $50,000 available for development grants to eligible Tribes. In order to be eligible for a CWA section 406 development grant, a Tribe must have coastal recreation waters adjacent to beaches or similar points of access that are used by the public. The phrase ''coastal recreation waters'' is defined in CWA section 502(21) to mean the Great Lakes and marine coastal waters (including coastal estuaries) that are designated under CWA section 303(c) for use for swimming, bathing, surfing, or similar water contact activities. The statute explicitly excludes from the definition inland waters and waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea. In addition, a tribe must demonstrate that it meets the ''treatment in the same manner as a State'' (TAS) criteria contained in CWA section 518(e) for purposes of receiving a section 406 beaches grant. To demonstrate TAS, the Tribe must show that it: (1) Is federally recognized; (2) has a governing body carrying out substantial governmental duties and powers; (3) will be exercising functions pertaining to waters within reservation; and (4) is reasonably expected to be capable of carrying out the functions consistent with the CWA and all applicable regulations. EPA encourages those Tribes with coastal recreation waters to contact their regional BEACH Act grant coordinator for further information regarding the application process as soon as possible.

Are There Any Additional Eligibility Requirements and Grant Conditions Applicable to States, Tribes, and Territories?

Yes, there are additional eligibility requirements and grant conditions. First, CWA section 406(b)(2)(A) provides that EPA may only award a grant to implement a monitoring and notification program if:

(i) The program is consistent with the performance criteria published by the Administrator under CWA section 406(a);

(ii) the State or local government prioritizes the use of grant funds for particular coastal recreation waters based on the use of the water and the risk to human health presented by pathogens or pathogen indicators;

(iii) the State or local government makes available to the Administrator the factors used to prioritize the use of funds under clause (ii);

(iv) the State or local government provides a list of discrete areas of coastal recreation waters that are subject to the program for monitoring and notification for which the grant is provided that specifies any coastal recreation waters for which fiscal constraints will prevent consistency with the performance criteria under CWA section 406(a); and

(v) the public is provided an opportunity to review the program through a process that provides for public notice and an opportunity for comment.

Second, CWA section 406(c) requires that as a condition of receipt of a CWA section 406 grant, a State or local government program for monitoring and notification must identify:

(1) lists of coastal recreation waters in the State, including coastal recreation waters adjacent to beaches or similar points of access that are used by the public;

(2) in the case of a State program for monitoring and notification, the process by which the State may delegate to local governments responsibility for implementing the monitoring and notification program;

(3) the frequency and location of monitoring and assessment of coastal recreation waters based on—

(A) The periods of recreational use of the waters;

(B) the nature and extent of use during certain periods;

(C) the proximity of the waters to known point sources and nonpoint sources of pollution; and

(D) any effect of storm events on the waters;

(4) (A) the methods to be used for detecting levels of pathogens and pathogen indicators that are harmful to human health; and

(B) the assessment procedures for identifying short-term increases in pathogens and pathogen indicators that are harmful to human health in coastal recreation waters (including increases in relation to storm events);

(5) measures for prompt communication of the occurrence, nature, location, pollutants involved, and extent of any exceeding of, or likelihood of exceeding, applicable water quality standards for pathogens and pathogen indicators to—

(A) the Administrator, in such form as the Administrator determines to be appropriate; and

(B) a designated official of a local government having jurisdiction over land adjoining the coastal recreation waters for which the failure to meet applicable standards is identified;

(6) measures for the posting of signs at beaches or similar points of access, or functionally equivalent communication measures that are sufficient to give notice to the public that the coastal recreation waters are not meeting or are not expected to meet applicable water quality standards for pathogens and pathogen indicators; and

(7) measures that inform the public of the potential risks associated with water contact activities in the coastal recreation waters that do not meet applicable water quality standards.

Third, as required by CWA section 406(b)(3)(A), a State recipient of a CWA section 406 grant must submit to EPA, in such format and at such intervals as EPA determines to be appropriate, a report that describes:

(1) Data collected as part of the program for monitoring and notification as described in section 406(c), and

(2) actions taken to notify the public when water quality standards are exceeded. States must submit to EPA both the monitoring and notification reports for any beach season by January 31 of the year following the beach season. For the 2008 beach season, the deadline for states to submit these reports is January 31, 2009. EPA first established this report submission deadline in the **Federal Register** notice for the fiscal year 2003 grants (68 FR 15446, 15449 (March 31, 2003)).

Fourth, States are required to report to EPA, latitude, longitude and mileage data on:

(1) The extent of beaches and similar points of public access adjacent to coastal recreation waters, and

(2) The extent of beaches that are monitored.

EPA first established this requirement in the**Federal Register** notice for the fiscal year 2003 grants (68 FR 15446, 15447 (March 31, 2003)). EPA is continuing this requirement in order to capture any changes States may make to their beach monitoring and notification program. States must report to EPA any changes to either the extent of their beaches or similar points of access, or to the extent of their beaches that are monitored.

How Much Funding Is Available?

For fiscal year 2008, the total available for BEACH Act grants is expected to be $9,745,500. EPA expects to award all but $50,000 to eligible States and Territories for implementation grants. EPA intends to award the remaining $50,000 in development grants to eligible Tribes. If EPA does not award any grants to eligible Tribes, EPA will redistribute the money to eligible States and Territories using the allocation formula described below.

How Will the Funding for States and Territories Be Allocated?

For fiscal year 2008, EPA expects to award grants to all eligible States and Territories who apply for funding based on the allocation formula that the Agency developed for awarding BEACH Act grant funds in 2002. EPA consulted with various States, the Coastal States Organization, and the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) to develop this formula. The allocation formula uses three factors: (1) Beach season length, (2) beach miles, and (3) beach use.

(1) Beach Season Length

EPA selected beach season length as a factor because it determines the part of the year when a government would conduct its monitoring program. The longer the beach season, the more resources a government would need to conduct monitoring. The Agency obtained the information on the length of a beach season from the National Health Protection Survey of Beaches for the States or Territories that submitted a completed survey. EPA estimated the beach season length for Alaska based on air and water temperature, available information on recreation activities, and data from the 1993 National Water Based Recreation Survey. EPA grouped the States and U.S. Territories into four categories of beach season lengths:

For beaches in:	The beach season category is:
Alaska	< 3 months.
Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, Wisconsin.	3–4 months.
Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina	5–6 months.
American Samoa, California, Florida, Guam, Hawaii, Northern Mariana, Puerto Rico, Texas, U.S. Virgin Islands.	9–12 months.

(2) Beach Miles

EPA selected miles of beach as a factor because it determines the geographical extent over which a government would conduct monitoring. The more miles of beaches, the more resources a government would need to conduct monitoring. EPA does not have beach mileage data in a format that can be used for the allocation formula at this time. Therefore, EPA is using shoreline miles as a surrogate for beach miles in the allocation formula. Shoreline miles data overestimates beach miles in some States and Territories; however, EPA and States agreed that this is the best way to estimate beach miles until complete beach mile data become available. EPA used the National Oceanic and Atmospheric Administration (NOAA) publication, The *Coastline of the United States,* to quantify shoreline miles.

(3) Beach Use

EPA selected beach use as a factor because it reflects the magnitude of

potential human exposure to pathogens at recreational beaches. Greater use of beaches makes it more likely that a government would need to increase monitoring frequency due to the larger number of people potentially exposed to pathogens. EPA continues to use the coastal population of counties (based on the 2000 Census data) to quantify the coastal population that is wholly or partially within the State's or Territory's legally-defined coastal zone, as a surrogate for actual beach usage.

The allocation formula sums the three parts. The first part is a base amount for all States and Territories that varies with the length of the beach season. The second part distributes 50% of the total remaining funds based on the ratio of shoreline miles in a State or Territory to the total length of shoreline miles across the entire United States. For example, if a State has 4% of the total coastal and Great Lakes shoreline, that State would receive 4% of 50% (or 2%) of total funds remaining after the Agency distributed the funds for part one. The third part distributes the remaining 50% based on the ratio of coastal population in a State or Territory to the total coastal population in the United States. For example, if a State has 2% of the total coastal and Great Lakes population, that State would receive 2% of 50% (or 1%) of the total funds remaining after the Agency distributes the funds based on the first two parts. The following table summarizes the allocation formula:

For the factor:	The part of the allocation is:
Beach season length	< 3 months: $150,000 (States and Territories with a season <3 months receive season-based funding only.) 3–4 months: $200,000. 5–6 months: $250,000. >6 months: $300,000.
Shoreline miles	determined based on the ratio of shoreline miles in a State/Territory to the total length of shoreline miles across the United States and is taken from 50% of funds remaining after allocation of season-based funding.
Coastal population	determined based on the ratio of coastal population in a State/Territory to the total coastal population in the United States and is taken from 50% of funds remaining after allocation of season-based funding and funding based on shoreline miles.

For 2008, the total available for BEACH Act grants to States and Territories is expected to be $9,695,500. Assuming all 35 States and Territories with coastal recreation waters apply and meet the statutory eligibility requirements for implementation grants (and have met the statutory grant conditions applicable to previously awarded section 406 grants), the distribution of the funds for year 2008 is expected to be:

For the State or Territory of:	The year 2008 allocation is expected to be:
Alabama	$258,390
Alaska	$147,650
American Samoa	$297,460
California	$514,720
Connecticut	$220,500
Delaware	$207,730
Florida	$526,320
Georgia	$282,700
Guam	$297,930
Hawaii	$318,590
Illinois	$240,290
Indiana	$202,730
Louisiana	$320,270
Maine	$252,220
Maryland	$266,900
Massachusetts	$251,930
Michigan	$276,210
Minnesota	$201,190
Mississippi	$253,680
New Hampshire	$201,450
New Jersey	$275,480
New York	$347,300
North Carolina	$299,150
Northern Marianas	$298,670
Ohio	$220,780
Oregon	$225,970
Pennsylvania	$219,650
Puerto Rico	$324,080
Rhode Island	$209,650
South Carolina	$293,270
Texas	$379,140
U.S. Virgin Islands	$298,510
Virginia	$274,650
Washington	$267,980
Wisconsin	$222,420

What If a State Does Not Apply or Does Not Qualify for Funding?

EPA expects that all 35 States and Territories will apply for a grant. If fewer than 35 States and Territories apply for the allocated amount, or if any applicant fails to meet the statutory eligibility requirements (or the statutory conditions applicable to previously awarded section 406 grants), then EPA will distribute available grant funds to eligible States and Territories in the following order:

(1) States and Territories that meet the eligibility requirements for implementation grants and that have met the statutory conditions applicable to previously awarded section 406 grants will be awarded the full amount of funds allocated to the State under the formula described above.

(2) EPA may award program implementation grants to local governments in States and Territories that the Agency determines have not met the requirements for implementation grants.

(3) Consistent with CWA Section 406(h), EPA will use the State's and Territory's allocated funds to conduct a beach monitoring and notification program for beaches in any State and Territory that EPA determines does not have a program for monitoring and notification that is consistent with EPA's grant performance criteria.

What If a State or Territory Cannot Use All of Its Allocation?

If a State, Tribe, or Territory cannot use all of its allocation, the Regional Administrator may award the unused funds to any eligible coastal or Great Lake grant recipient in the Region for the continued development or implementation of their coastal recreation water monitoring and notification program(s). If, after re-allocation, there are still unused funds within the Region, EPA Headquarters will redistribute these funds to any eligible coastal or Great Lake BEACH Act grant recipient.

How Will the Funding for Tribes Be Allocated?

EPA expects to apportion the funds set aside for tribal grants evenly among all eligible Tribes that apply for funding.

What Is the Expected Duration of Funding and Projects?

The expected funding and project periods for implementation grants awarded in fiscal year 2008 is one year.

Does EPA Require Matching Funds?

Recipients do not have to provide matching funds for BEACH Act grants. EPA may establish a match requirement in the future based on a review of State program activity and funding levels.

III. Eligible Activities

Recipients of implementation grants may use funds for activities to support implementing a beach monitoring and notification program that is consistent with the required performance criteria for grants specified in the document, *National Beach Guidance and Required Performance Criteria for Grants* (EPA–823–B–02–004). Recipients of development grants may use the funds to develop a beach monitoring and notification program consistent with the performance criteria.

IV. Selection Process

EPA Regional offices will award CWA section 406 grants through a non-competitive process. EPA expects to award grants to all eligible State, Tribe, and Territory applicants that meet the applicable requirements described in this notice.

Who Has the Authority To Award BEACH Act Grants?

The Administrator has delegated the authority to award BEACH Act grants to the Regional Administrators.

V. Application Procedure

What Is the Catalog of Federal Domestic Assistance (CFDA) Number for the BEACH Monitoring and Notification Program Implementation Grants?

The number assigned to the BEACH Act Grants is 66.472, Program Code CU.

Can BEACH Act Grant Funds Be Included in a Performance Partnership Grant?

For fiscal year 2008, BEACH Act Grants cannot be included in a Performance Partnership Grant.

What Is the Application Process for States and Territories?

Your application package should contain completed:

- EPA SF–424 Application for Federal Assistance, and
- Program Summary.

In order for EPA to determine that a State or local government is eligible for an implementation grant, the applicant must submit documentation with its application to demonstrate that its program is consistent with the performance criteria. The Program Summary must contain sufficient technical detail for EPA to confirm that your program meets the statutory eligibility requirements and statutory grant conditions for previously awarded CWA section 406 grants listed in section II (Funding and Eligibility) of this notice. The Program Summary must also describe how the State used BEACH Act Grant funds to develop and implement the beach monitoring and notification program, and how the program is consistent with the nine performance criteria in *National Beach Guidance and Required Performance Criteria for Grants* (EPA–823–B–02–004) which is found at *http://www.epa.gov/waterscience/beaches/grants/guidance/index.html.* The Program Summary should also describe the State or Territory program's objectives for the next year.

States and Territories must submit application packages to the appropriate EPA Regional Office by March 14, 2008. EPA will make an award after the Agency reviews the documentation and confirms that the program meets the applicable requirements. The Office of Management and Budget has authorized EPA to collect this information (BEACH Act Grant Information Collection Request, OMB control number 2040–0244). Please contact the appropriate EPA Regional Office for a complete application package. See Section VI for a list of EPA Regional Grant Coordinators or visit the EPA Beach Watch Web site at *http://www.epa.gov/waterscience/beaches/contact.html* on the Internet.

What Should a Tribe's Notice of Interest Contain?

The Notice of Interest should include the Tribe's name and the name and telephone number of a contact person.

Are Quality Assurance and Quality Control (QA/QC) Required for Application?

Yes. Three specific QA/QC requirements must be met to comply with EPA's performance criteria for grants:

(1) Applicants must submit documentation that describes the quality system implemented by the State, Territory, Tribe, or local government. Documentation may be in the form of a Quality Management Plan or equivalent documentation.

(2) Applicants must submit a quality assurance project plan (QAPP) or equivalent documentation.

(3) Applicants are responsible for submitting documentation of the quality system and QAPP for review and approval by the EPA Quality Assurance Officer or his designee before they take primary or secondary environmental measurements. More information about the required QA/QC procedures is available in Chapter Four and Appendix H of *National Beach Guidance and Required Performance Criteria for Grants* (EPA–823–B–02–004).

Are There Reporting Requirements?

Recipients must submit annual performance reports and financial reports as required in 40 CFR 31.40 and 31.41. The annual performance report explains changes to the beach monitoring and notification program during the grant year. It also describes how the grant funds were used to implement the program to meet the performance criteria listed in *National Beach Guidance and Required Performance Criteria for Grants* (EPA–823–B–02–004). The annual performance report required under 40 CFR 31.40 is due no later than 90 days after the grant year ends. Recipients must also submit annual monitoring and notification reports required by the National Beach Guidance and Required Performance Criteria for Grants (EPA–823–B–02–004). Sections 2.2.3 and 4.3 of the document contain the performance criterion requiring an annual monitoring report, and sections 2.2.8 and 5.4 contain the performance criterion requiring an annual notification report. This document can be found at *http://www.epa.gov/waterscience/beaches/grants/.* These reports, required to be submitted to EPA by States, Tribes and Territories under CWA section 406(b)(3)(A), include data collected as part of a monitoring and notification program. As a condition of award of an implementation grant, EPA requires that the monitoring report and the notification report for any beach season be submitted not later than January 31 of the year following the beach season. (See Section II, Funding and Eligibility, above.)

What Regulations and OMB Cost Circular Apply to the Award and Administration of these Grants?

The regulations at 40 CFR Part 31 govern the award and administration of grants to States, Tribes, local governments, and Territories under CWA section 406(b). Allowable costs will be determined according to the cost principles outlined in 2 CFR Part 225.

VI. Grant Coordinators

Headquarters—Washington DC

Rich Healy USEPA, 1200 Pennsylvania Ave. NW.—4305, Washington DC 20460; T: 202–566–0405; F: 202–566–0409; *healy.richard@epa.gov.*

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island

Matt Liebman USEPA Region I, One Congress St. Suite 1100—COP, Boston,

MA 02114–2023; T: 617–918–1626; F: 617–918–1505; *liebman.matt@epa.gov.*

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Helen Grebe USEPA Region II, 2890 Woodbridge Ave., MS220, Edison, NJ 08837–3679; T: 732–321–6797; F: 732–321–6616; *grebe.helen@epa.gov.*

Region III—Delaware, Maryland, Pennsylvania, Virginia

Mark Barath USEPA Region III, 1650 Arch Street, 3WP30, Philadelphia, PA 19103–2029; T: 215–814–2759; F: 215–814–2318; *barath.mark@epa.gov.*

Region IV—Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina

Joel Hansel USEPA Region IV, 61 Forsyth St., 15th Floor, Atlanta, GA 30303–3415; T: 404–562–9274; F: 404–562–9224; *hansel.joel@epa.gov.*

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Holly Wirick USEPA Region V, 77 West Jackson Blvd., WT–16J, Chicago, IL 60604–3507; T: 312–353–6704; F: 312–886–0168; *wirick.holiday@epa.gov.*

Region VI—Louisiana, Texas

Mike Schaub USEPA Region VI, 1445 Ross Ave. 6WQ–EW, Dallas, TX 75202–2733; T: 214–665–7314; F: 214–665–6689; *schaub.mike@epa.gov.*

Region IX—American Samoa, Commonwealth of the Northern Mariana Islands, California, Guam, Hawaii

Terry Fleming USEPA Region IX, 75 Hawthorne St. WTR–2, San Francisco, CA 94105; T: 415-972–3462; F: 415–947–3537; *fleming.terrence@epa.gov.*

Region X—Alaska, Oregon, Washington

Rob Pedersen USEPA Region X, 120 Sixth Ave., OW–134, Seattle, WA 98101; T: 206–553–1646; F: 206–553–0165; *pedersen.rob@epa.gov.*

Dated: January 7, 2008.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. E8–443 Filed 1–11–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 4, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. Sections 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before March 14, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, send them to Leslie F. Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Leslie F. Smith via the Internet at *PRA@fcc.gov* or call (202) 418–0217.

OMB Control Number: 3060–0760.

Title: Access Charge Reform, CC Docket No. 96–262 (*First Report and Order*); *Second Order on Reconsideration and Memorandum Opinion and Order,* and *Fifth Report and Order.*

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 20 respondents; 20 responses.

Estimated Time per Response: 3–1,575 hours.

Obligation to Respond: Required to obtain or retain benefits.

Frequency of Response: On occasion and one-time reporting requirements.

Total Annual Burden: 55,514 hours.

Total Annual Cost: $12,240.

Privacy Act Impact Assessment: No impacts.

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: On August 31, 2007, the FCC released a *Report and Order and Memorandum Opinion and Order* (''*Order*''), Sunset of the BOC Separate Affiliate and Related Requirements and 2000 Biennial Regulatory Review Separate Affiliate Requirements, WC Docket No. 02–112; CC Docket No. 00–175, FCC 07–159, Pursuant to this *Order,* respondents are no longer required to comply with 47 U.S.C. Section 272 structural safeguards. As such, the respondents must now file certifications with the Commission prior to providing contract tariff services to itself or to any affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate for use in the provision of any in-region, long distance services that it provides service pursuant to that contract tariff to an unaffiliated customer. The certification requirement will ensure, as a result of the relief granted in this *Order*, equivalent protection in the event the BOCs provide in-region, long distance services directly and will be less burdensome and less costly for these providers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–459 Filed 1–11–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

January 8, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 13, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.''

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0316.

Title: 47 CFR Sections 76.1700, Records to Be Maintained Locally by Cable System Operators; 76.1703, Commercial Records on Children's Programs; 76.1704, Proof-of-Performance Test Data; 76.1707 Leased Access, 76.1711, Emergency Alert System (EAS) Tests and Activation.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3,000.

Estimated Hours per Response: 26 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 78,000 hours.

Total Annual Cost: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 76.1700 exempts cable television systems having fewer than 1,000 subscribers from the public inspection requirements contained in 47 CFR Sections 76.1701, 76.1702, 76.1703, 76.1704, 76.1706, and 76.1715.

The operator of every cable television system having 1,000 or more subscribers but fewer than 5,000 subscribers shall, upon request, provide the information required by Sections 76.1702, 76.1703, 76.1704, 76.1706 and 76.1715. These cable television systems shall also maintain for public inspection a file containing a copy of all records required to be kept by 47 CFR Section 76.1701.

The operator of every cable television system having 5,000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by Sections 76.1701, 76.1702, 76.1703, 76.1704, 76.1706, and 76.1715.

47 CFR 76.1700(b) requires that the public inspection file shall be maintained at the office which the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any accessible place in the community served by the system unit(s) (such as a public registry for documents or an attorney's office). The public inspection file shall be available for public inspection at any time during regular business hours.

47 CFR 76.1700(d) requires the records specified in paragraph 76.1700(a) be retained for the period specified in Sections 76.1701, 76.1702, 76.1704(a), and 76.1706.

47 CFR 76.1703 requires that cable operators airing children's programming must maintain records sufficient to verify compliance with 47 CFR Section 76.225 and make such records available to the public. Such records must be maintained for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

47 CFR 76.1704(a) requires the proof of performance tests required by Section 76.601 shall be maintained on file at the operator's local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request.

47 CFR 76.1704(b) requires the provisions of Section 76.1704(a) shall not apply to any cable television system having fewer than 1,000 subscribers.

47 CFR 76.1707 requires that if a cable operator adopts and enforces a written policy regarding indecent leased access programming pursuant to Section 76.701, such a policy will be considered published pursuant to that rule by inclusion of the written policy in the operator's public inspection file.

47 CFR 76.1711 requires that records be kept of each test and activation of the Emergency Alert System (EAS) procedures pursuant to the requirement of 47 CFR Part 11 and the EAS Operating Handbook. These records shall be kept for three years.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–460 Filed 1–11–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

January 7, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 13, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.''

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

OMB Number: 3060–0888.

Title: Section 76.7, Petition Procedures; § 76.9, Confidentiality of Proprietary Information; § 76.61, Dispute Concerning Carriage; § 76.914, Revocation of Certification; § 76.1003, Program Access Proceedings; § 76.1302, Carriage Agreement Proceedings; § 76.1513, Open Video Dispute Resolution.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 600.

Estimated Time per Response: 4 to 60 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 19,200 hours.

Total Annual Costs: $240,000.

Nature of Response: Required to obtain or retain benefits.

Nature and Extent of Confidentiality: A party that wishes to have confidentiality for proprietary information with respect to a submission it is making to the Commission must file a petition pursuant to the pleading requirements in § 76.7 and use the method described in §§ 0.459 and 76.9 to demonstrate that confidentiality is warranted.

Privacy Act Impact Assessment: None.

Needs and Uses: On September 11, 2007, the Commission adopted a Report and Order and a Notice of Proposed Rulemaking In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992— Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition; Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements, MB Docket Nos. 07–29, 07–198, FCC 07–169. Section 628 of the Communications Act proscribes a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor from engaging in unfair methods of competition and deceptive practices and directs the Commission to, among other things, prescribe regulations to provide for an expedited Commission review of any complaints made under this section. Section 76.1003 contains the Commission's procedural rules for resolving these program access complaints. The new rules to this information collection are 47 CFR 76.1003(e)(1) and 47 CFR 76.1003(j).

47 CFR 76.1003(e)(1) requires a cable operator, satellite cable programming vendor, or satellite broadcast programming vendor that expressly references and relies upon a document in asserting a defense to a program access complaint filed pursuant to § 76.1003 or in responding to a material allegation in a program access complaint filed pursuant to § 76.1003, to include such document or documents as part of the answer.

47 CFR 76.1003(j) states in addition to the general pleading and discovery rules contained in § 76.7 of this part, parties to a program access complaint may serve requests for discovery directly on opposing parties, and file a copy of the request with the Commission. The respondent shall have the opportunity to object to any request for documents that are not in its control or relevant to the dispute. Such request shall be heard, and determination made, by the Commission. Until the objection is ruled upon, the obligation to produce the disputed material is suspended. Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection as described above, or who fails to respond to a Commission order for discovery material, may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice.

47 CRR 76.7. Pleadings seeking to initiate FCC action must adhere to the requirements of § 76.6 (general pleading requirements) and § 76.7 (initiating pleading requirements). Section 76.7 is used for numerous types of petitions and special relief petitions, including general petitions seeking special relief, waivers, enforcement, show cause, forfeiture and declaratory ruling procedures.

47 CFR 76.9. A party that wishes to have confidentiality for proprietary information with respect to a

submission it is making to the FCC must file a petition pursuant to the pleading requirements in § 76.7 and use the method described in §§ 0.459 and 76.9 to demonstrate that confidentiality is warranted. The petitions filed pursuant to this provision are contained in the existing information collection requirement and are not changed by the proposed rule changes.

47 CFR 76.61. Section 76.61(a) permits a local commercial television station or qualified low power television station that is denied carriage or channel positioning or repositioning in accordance with the must-carry rules by a cable operator to file a complaint with the FCC in accordance with the procedures set forth in § 76.7. Section 76.61(b) permits a qualified local noncommercial educational television station that believes a cable operator has failed to comply with the FCC's signal carriage or channel positioning requirements (§§ 76.56 through 76.57) to file a complaint with the FCC in accordance with the procedures set forth in § 76.7.

47 CFR 76.914. Section 76.914(c) permits a cable operator seeking revocation of a franchising authority's certification to file a petition with the FCC in accordance with the procedures set forth in § 76.7.

47 CFR 76.1003. Section 76.1003(a) permits any multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the FCC's competitive access to cable programming rules to commence an adjudicatory proceeding at the FCC to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in § 76.7, except to the extent such procedures are modified by § 76.1003.

47 CFR 76.1302. Section 76.1302(a) permits any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the FCC's regulation of carriage agreements to commence an adjudicatory proceeding at the FCC to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in § 76.7, except to the extent such procedures are modified by § 76.1302.

47 CFR 76.1513. Section 76.1513(a) permits any party aggrieved by conduct that it believes constitutes a violation of the FCC's regulations or in section 653 of the Communications Act (47 U.S.C. 573) to commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in § 76.7, except to the extent such procedures are modified by § 76.1513.

OMB Control Number: 3060–0390.

Title: Broadcast Station Annual Employment Report.

Form Number: FCC Form 395–B.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 14,000.

Estimated Time per Response: 0.88 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 12,320 hours.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Total Annual Costs: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 395–B, ''The Broadcast Station Annual Employment Report,'' is used to assess industry employment trends and provide reports to Congress. Licensees with five or more full-time employees are required to file Form 395–B on or before September 30th of each year. The form is a data collection device used to compile statistics on the workforce employed by broadcast licensees/permittees. The report identifies each staff member by gender and race/ethnicity in each of the nine major job categories. On June 4, 2004, the FCC released the Third Report and Order and Fourth Notice of Proposed Rulemaking (3rd R&O), In the *Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, MM Docket No. 98–204, FCC 04–103*, in which it considers issues relating to the Annual Employment Report forms, including Form 395–B, ''The Broadcast Station Annual Employment Report.'' In the 3rd R&O, the Commission is adopting revised rules requiring broadcasters and multichannel video programming distributors (MVPDs) to file annual employment reports. Radio and television broadcasters will use Form 395–B to file annual employment reports. The intent of this 3rd R&O is to reinstate and update requirements for broadcasters and MVPDs to file annual employment reports. The intent of the Fourth Notice of Proposed Rulemaking is to provide time for MVPDs, broadcast licensees, and the public to address the issue of whether the Commission should keep these forms confidential after they are filed. With the effective date of the rule revisions adopted in the 3rd R&O, MVPDs and broadcasters must start keeping records of their employees so they can prepare their annual employment reports due to be filed on or before September 30, 2004.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–461 Filed 1–11–08; 8:45 am]

BILLING CODE 6712–01–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 applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 8, 2008.

A. Federal Reserve Bank of New York (Anne MacEwen, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. The Toronto–Dominion Bank, Toronto, Canada; TD US P&C Holdings

ULC, Calgary, Canada; TD Banknorth, Inc., Portland, Maine; Cardinal Top Co., Cardinal Intermediate Co., and Cardinal Merger Co., all of New York, New York; to acquire 100 percent of the voting shares of Commerce Bancorp, Inc., Cherry Hill, New Jersey, and thereby indirectly acquire voting shares of Commerce Bank, NA, Philadelphia, Pennsylvania, and Commerce Bank/North, Ramsey, New Jersey; and 14.8 percent of Pennsylvania Commerce Bancorp, Inc., and thereby indirectly acquire Commerce Bank/Harrisburg, N.A., both of Harrisburg, Pennsylvania. In connection with this application, Cardinal Top Co., Cardinal Intermediate Co., and Cardinal Merger Co. have applied to become bank holding companies.

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Heartland Bancshares, Inc., Clinton, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Marshall Community Bancshares, Inc., and thereby indirectly acquire voting shares of Community Bank of Marshall, both in Marshall, Missouri.

Board of Governors of the Federal Reserve System, January 9, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E8–431 Filed 1–11–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 8, 2008.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. BB&T Corporation, Winston–Salem, North Carolina; to acquire 100 percent of the voting shares of BB&T Financial, FSB, Columbus, Georgia, a *de novo* savings assocation, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 9, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E8–430 Filed 1–11–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–05CV]

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

Survey of 911 Emergency Treatment for Heart Disease and Stroke—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Division for Heart Disease and Stroke Prevention (DHDSP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's Division for Heart Disease and Stroke Prevention (DHDSP) was established to provide national leadership to reduce the burden of disease, disability, and death from heart disease and stroke through its research and programs. CDC proposes to collect information concerning pre-hospital Emergency Medical Services (EMS) practices needed to develop solutions to the crisis in emergency care and to effectively coordinate national public health interventions in death and disability from heart attacks and stroke. The proposed survey will be conducted with approximately 1,800 local pre-hospital EMS provider organizations to examine staffing and certification configurations, medical oversight, training, and the scope of practice of pre-hospital emergency care specifically for cardiac and stroke emergencies. The survey sample includes all 2,250 local pre-hospital EMS provider organizations in nine proposed states (FL, MA, KS, MT, NM, WI, OR, SC, AR).

The information collection will also include semi-structured interviews with ten directors of sub-state EMS regions. The interviews will examine organizational and administrative aspects of pre-hospital EMS at the state and sub-state levels to explore similarities and differences from state to state. Data analysis will include descriptive statistics for data from the EMS provider survey on pre-hospital field practices and capabilities for cardiac and stroke emergencies in nine states representing all regions of the U.S. It will also include qualitative analysis of information related to state and sub-state EMS organizational and administrative contexts and their influence on local pre-hospital EMS. The information collection will provide for interaction with important stakeholders for partnering and cooperation through the selection of an expert working group to review the survey findings and assist with the development of recommendations.

There are no costs to respondents except their time. The estimated annualized burden hours are 533.

Estimated Annualized Burden Hours

Type of respondents	Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
Supervisor/Manager of EMS Personnel	Screening Script to Identify Supervisor for Interview.	2,250	1	2/60
	Local EMS Provider Survey	1,800	1	15/60
Administrator/Director of Sub-state EMS Region	Topic Guide for Semi-Structured Telephone Interview.	10	1	45/60

Dated: January 7, 2008.

Maryam I. Daneshvar,

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

[FR Doc. E8–425 Filed 1–11–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Field Trials to Efficacy of Natural Products for the Control of the Tick Vectors of Lyme Disease Spirochetes, Program Announcement (PA) CK08–001; Evaluation of Reservoir-Targeted Vaccine Formulations To Prevent Enzootic Transmission of Borrelia Burgdorferi (Lyme Borreliosis), PA CK08–002

Correction: This notice was published in the **Federal Register** on December 19, 2007, Volume 72, Number 243, page 71913–71914. The title and place should read as follows:

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Field Trials to Efficacy of Natural Products for the Control of the Tick Vectors of Lyme Disease Spirochetes, Program Announcement (PA) CK08–001; Evaluation of Reservoir-Targeted Vaccine Formulations To Prevent Enzootic Transmission of Borrelia Burgdorferi (Lyme Borreliosis), PA CK08–002.

Place: Teleconference.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 8, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–480 Filed 1–11–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified or Altered System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the Privacy Act of 1974, we are proposing to modify or alter an existing SOR, ''Health Plan Management System (HPMS) ,'' System No. 09–70–4004, established at 63 **Federal Register** 43187 (August 12, 1998). We will broaden the scope of this system by including a new activity related to health plan and Part D plan management referred to as the Complaint Tracking Module (CTM). CTM will collect and maintain identifiable information on individuals who are, but not limited to, complainants, including beneficiaries, relatives and caregivers, Congresspersons and their staff, State Health Insurance Program representatives, and providers of service and their staff. The CTM stores complaint data, including, but not limited to, the following: Date complaint received; date of incident; issue level; complainant and/or beneficiary information; complaint summary; complaint category; complaint resolution summary; and plan resolution summary. Plans use the CTM to track the beneficiary complaints assigned to their organization, enter complaint case resolutions, and close out complaints.

In addition, HPMS will collect information from health plans and Part D plan organizations pertaining to individuals who market and/or sell health insurance and prescription drug plan products on behalf of these plan organizations and who are licensed or authorized by a State Insurance Commissioner or other certifying agencies. We are sharing data pertaining to all agents/brokers to assist CMS and State Insurance Commissioners in improving oversight of the sales marketplace and in avoiding fraudulent sales practices that mislead and harm Medicare beneficiaries. We propose to assign a new CMS identification number to this system to simplify the obsolete and confusing numbering system originally designed to identify the Bureau, Office, or Center that maintained information in the Health Care Financing Administration systems of records. The new assigned identifying number for this system should read: System No. 09–70–0500.

We will delete routine use number 1 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject. We propose to delete published routine use number 5 authorizing disclosure to a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating automated information systems software. We also propose to add a routine use for the release of information that permits disclosure to agency contractors, consultants, and CMS grantees that perform a task for the agency. CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor, consultant, or grantee to fulfill its duties.

We propose to delete published routine use number 2 authorizing disclosure to the Bureau of Census;

published routine use number 7 authorizing disclosure to state Medicaid agencies; number 8 authorizing disclosure to an agency of a state Government, or established by state law, for purposes of determining the quality of health care services provided in the state; published routine use number 9 authorizing disclosure to another Federal or state agency; published routine use number 10 authorizing disclosure to other Federal agencies or states to support the administration of other Federal or state health care programs; and published routine use number 11 authorizing disclosure to the Social Security Administration. These routine uses duplicate the intended releases and as such will be combined into a single routine use to ''assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to: (a) Contribute to the accuracy of CMS's proper payment of Medicare benefits, (b) enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with federal funds; and (c) evaluate and monitor the quality of health care in the program and contribute to the accuracy of health plan operations.''

We will modify existing routine use number 6 that permits disclosure to Peer Review Organizations (PRO). Organizations previously referred to as PROs will be renamed to read: Quality Improvement Organizations (QIO). Information will be disclosed to QIOs for health care quality improvement projects. The modified routine use will be renumbered as routine use number 4. We propose to delete published routine use number 14 authorizing disclosures to any entity that makes payment for or oversees administration of health care services to combat fraud and abuse against such entity or the program or services administered by such entity. This disclosure provision falls outside the scope of the stated purpose for the collection of data maintained in this system.

We will broaden the scope of this system by including the section titled ''Additional Circumstances Affecting Routine Use Disclosures,'' that addresses ''Protected Health Information (PHI)'' and ''small cell size.'' The requirement for compliance with HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' apply when ever the system collects or maintain PHI. This system may contain PHI. In addition, our policy to prohibit release if there is a possibility that an individual can be identified through ''small cell size'' will apply to the data disclosed from this system.

The security classification previously reported as ''None'' will be modified to reflect that the data in this system is considered to be ''Level Three Privacy Act Sensitive.'' We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of this modified system is to collect and maintain information on Medicare beneficiaries enrolled in Medicare Health Plans in order to develop and disseminate information required by the Balanced Budget Act of 1997 that will inform beneficiaries and the public of indicators of health plan performance to help beneficiaries choose among health plans, support quality improvement activities within the plans, monitor and evaluate quality improvement activities within the plans, monitor and evaluate care provided by health plans; provide guidance to program management and policies, and provide a research data base for CMS and other researchers. The information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant; (2) assist another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent, for evaluating and monitoring the quality of home health care and contribute to the accuracy of health insurance operations; (3) support research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects; (4) support the functions of Quality Improvement Organizations (QIO); (5) support litigation involving the Agency; (6) combat fraud and abuse in certain health care programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the modified or altered routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 4, 2008. To ensure that all parties have adequate time in which to comment, the modified system, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Robinson, Director, Division of Plan Data, Plan Oversight and Accountability Group, Center for Beneficiary Choices, Center for Medicare & Medicaid Services, 7500 Security Boulevard, C4–14–21, Baltimore, Maryland 21244–1850. Her telephone number is (410) 786–1826 or via e-mail at *lori.robinson@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Health Plan Management System is a database containing rates for selected performance measures for each Medicare health plan. The data are compiled by HIC number, member month contribution, and a flag to indicate if the member was counted in the rate's numerator. The system will collect rate information on categories such as the following:

- ''Use of Services'' measures such as the frequency of selected procedures (e.g., percutaneous transluminal coronary artery angioplasty, prostatectomy, coronary artery bypass with graft, hysterectomy, cholecystectomy, cardiac catheterization, reduction of fracture of

the femur, total hip and knee replacement, partial excision of the large intestine, carotid endarterectomy); percentage of members receiving inpatient, day/night and ambulatory mental health and chemical dependency services; readmission for chemical dependency, and specified mental health disorders.

• ''Effectiveness of Care'' measures such as breast cancer screening, beta blocker treatment after a heart attack, eye exams for people with diabetes, and follow-up after hospitalization for mental illness.

• ''Member Satisfaction'' measures related to quality, access, and general satisfaction.

• ''Functional Status'' measures which are patient centered and track actual outcomes or results of care, addressing both physical and mental well-being over time.

The information from HPMS will be augmented by being linked to other CMS data and other administrative data to provide validation and greater analytic capacity. The HPMS will be used to:

• Develop and disseminate summary information required by the Balanced Budget Act of 1997 that will inform beneficiaries and the public of indicators of health plan performance to help beneficiaries choose among health plans. The information will include plan-to-plan comparisons of benefits and co-payments supplemented with consumer satisfaction information and plan performance data.

• Support quality improvement activities. Summary data will be useful for health plans' internal quality improvement, as well as to CMS and Quality Improvement Organizations in monitoring and evaluating the care provided by health plans.

• Conduct research and demonstrations addressing managed care quality, access, and satisfaction issues.

• Provide guidance for program management and policy development.

HPMS houses the results of the Health Plan Employer Data and Information Set (HEDIS) and the Consumer Assessment of Health Plans Survey (CAHPS). The system will contain information on recipients of Medicare Part A and Part B services who are enrolled in health plans and Part D plans. The total number of current enrollees in Medicare Part C health plans is approximately 9 million.

HEDIS reflects a joint effort of public and private purchasers, consumers, labor unions, health plans, and measurement experts to develop a comprehensive set of performance measures for Medicare, Medicaid, and commercial populations enrolled in managed care plans. HEDIS measures eight aspects of health care: Effectiveness of care; access/availability of care, satisfaction with the experience of care, health plan stability, use of services, cost of care, informed health care choices, and health plan descriptive information. In 1997, CMS is requiring reporting of a number of performance measures from HEDIS relevant to the Medicare managed care population. The HEDIS data is subject to audit, to ensure that plans submit accurate and complete data. Another aspect of the audit is to assess the reasonableness of the HEDIS measures. For example, if all or most health plans have problems with a particular measure, the problem could be with the measure, not the plans.

Included in HEDIS is a functional status measure which tracks both physical health and mental health status over a 2-year period through a self-administered instrument in which the beneficiary indicates whether his/her health status has improved, stayed the same, or deteriorated. The measure is risk adjusted for co-morbid conditions, income, race, education, social support, age, and gender. It will be used to compare how well plans care for seniors. It reflects the belief that high quality health care can either improve or at least slow the rate of decline in senior members' ability to lead active and independent lives.

In concert with the Agency for Health Care Policy and Research, CMS sponsored the development of a Medicare specific version of the CAHPS consumer satisfaction survey. The survey will collect information about Medicare enrollees' satisfaction, access, and quality of care within managed care plans. Beginning in 1997, CMS is requiring all Medicare contracting plans to participate in an independent third party administration of an annual member satisfaction survey.

All performance measures are subject to modification as new performance measurement sets are developed with a stronger focus on outcomes and chronic disease issues, including patient satisfaction and quality of life measures relevant to specific diseases.

The Privacy Act permits us to disclose information without the consent of individuals for ''routine uses''—that is, disclosures that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected to produce estimates of health care use and quality, and determinants thereof, by the aged and disabled enrolled in group health plans. We anticipate the disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

The HPMS Complaints Tracking Module (CTM) stores beneficiary complaints related to the Medicare Advantage (MA) and Part D programs. This module contains beneficiary complaints that have been collected by 1–800–Medicare as well as beneficiary complaints entered directly into the CTM by CMS staff. The CTM stores complaint data, including, but not limited to, the following: Date complaint received; date of incident; issue level; complainant and/or beneficiary information; complaint summary; complaint category; complaint resolution summary; and plan resolution summary. Plans use the CTM to track the beneficiary complaints assigned to their organization, enter complaint case resolutions, and close out complaints. CMS uses the CTM to enter beneficiary complaints received directly by the regional office, perform casework for those complaints not assigned to an organization, and to monitor plan progress on resolving complaints timely.

We are sharing data pertaining to all marketing agents/brokers to assist CMS and State Department of Insurance (DOI) in improving oversight of the sales marketplace and in avoiding fraudulent sales practices that mislead and harm Medicare beneficiaries. Beneficiaries that are enrolled in a health plan or prescription drug plan under false, fraudulent pretense result in plan organizations receiving payments to which they are not entitled. As a result, there is a payment policy component involved. We will require contracted health plans and prescription drug plans, though contract or program memorandum (or both) to notify all agents/brokers that sell their Medicare products that their information is being shared with CMS, its contractors, and State DOIs.

I. Description of the Modified or Altered System of Records

A. Statutory and Regulatory Basis for SOR

Authority for maintenance of the system is given under section 1875 of the Social Security Act (the Act) (42 U.S.C. 1395ll), entitled Studies and Recommendations; section 1121 of the Act (42 U.S.C. 1121), entitled Uniform Reporting System for Health Services Facilities and Organizations; and § 1876 of the Act (42 U.S.C. 1395mm), entitled

Payments to Health Maintenance Organizations and Competitive Medical Plans. Authority for maintenance and dissemination of Health Plan information is also given under the Balanced Budget Act of 1997 (Pub. L. 105–33).

B. Collection and Maintenance of Data in the System.

Information is collected and maintained on recipients of Medicare Part A (Hospital Insurance) and Part B (supplementary medical insurance) services who are enrolled in Medicare health plans and prescription drug plans. CTM will collect and maintain identifiable information on individuals who are, but not limited to, complainants, including beneficiaries, relatives and caregivers, Congresspersons and their staff, State Health Insurance Program representatives, and providers of service and their staff. The system contains demographic and identifying data, as well as survey and deficiency data. Identifying data includes, but is not limited to: Name, title, address, city, state, ZIP code, e-mail address, telephone numbers, fax number, licensure number, SSN, Federal tax identification number, alias names, date of birth, gender, date admitted and/or date discharged. In addition, the CTM stores complaint data, including, but not limited to, the following: Date complaint received; date of incident; issue level; complainant and/or beneficiary information; complaint summary; complaint category; complaint resolution summary; and plan resolution summary.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release HPMS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of HPMS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from this system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, to collect and maintain information on Medicare beneficiaries enrolled in Medicare Health Plans.

2. Determines that:

a. The purpose for which the disclosure is to collect and maintain information on Medicare beneficiaries enrolled in Medicare Health Plans in order to develop and disseminate information required by the Balanced Budget Act of 1997 that will inform beneficiaries and the public of indicators of health plan performance to help beneficiaries choose among health plans, support quality improvement activities within the plans, monitor and evaluate quality improvement activities within the plans, monitor and evaluate care provided by health plans; provide guidance to program management and policies, and provide a research data base for CMS and other researchers;

b. the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. remove or destroy at the earliest time all patient-identifiable information; and

c. agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants, or to a grantee of a CMS-administered grant program who have been engaged by the agency to assist in the accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

We contemplate disclosing this information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system. CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require HPMS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided;

To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local law enforcement agencies) for a civil or criminal law enforcement activity (e.g. police, FBI, State Attorney General's office);

In addition, other state agencies in their administration of a Federal health program may require HPMS information for the purpose of developing and operating Medicaid reimbursement

systems; or for the purpose of administration of Federal/State program within the State. Data will be released to the State only on those individuals who are either patients within the State, of are legal residents of the State, regardless of the location of the facility in which the patient is receiving services;

To the agency of a State government, or established by State law, for purposes of determining, evaluating and/or assessing overall or aggregate cost, effectiveness, and/or the quality of services provided in the State; and

State agencies may use HPMS data to perform Federal certification and State licensure functions, including the investigation of complaints and entity-reported incidents.

3. To assist an individual or organization for research, evaluation or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

The collected data will provide the research, evaluation and epidemiological projects a broader, longitudinal, national perspective of the data. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare patients and the policy that governs the care. CMS understands the concerns about the privacy and confidentiality of the release of data for a research use. Disclosure of data for research and evaluation purposes may involve aggregate data rather than individual-specific data.

4. To Quality Improvement Organizations (QIO) in order to assist the QIO to perform Title XI and Title XVIII functions relating to assessing and improving quality of care.

The QIO will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. The QIO will assist state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. any employee of the agency in his or her official capacity, or

c. any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. the United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

6. To assist a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

7. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require HPMS information for the purpose of combating fraud and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 FR 82462 (12–28–00), Subparts A and E. Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003; and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources, also

applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications, the HHS Information Systems Program Handbook, and the CMS Information Security Handbook.

V. Effects of the Modified or Altered System of Records on Individual Rights

CMS proposes to modify this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: January 3, 2008.

Charlene Frizzera,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0500

SYSTEM NAME:

''Health Plan Management System (HPMS),'' HHS/CMS/CBC.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

The Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various co-locations of CMS agents.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information is collected and maintained on recipients of Medicare Part A (Hospital Insurance) and Part B (supplementary medical insurance) services who are enrolled in Medicare health plans and prescription drug plans. Identifiable information will also be collected on individuals who are, but not limited to, complainants, including beneficiaries, relatives and caregivers, Congresspersons and their staff, State Health Insurance Program representatives, and providers of service and their staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains demographic and identifying data, as well as survey and deficiency data. Identifying data includes, but is not limited to: name, title, address, city, state, ZIP code, e-mail address, telephone numbers, fax number, licensure number, SSN, Federal tax identification number, alias names, date of birth, gender, date admitted and/or date discharged. In addition, the CTM stores complaint data, including, but not limited to, the following: date complaint received; date of incident; issue level; complainant and/or beneficiary information; complaint summary; complaint category; complaint resolution summary; and plan resolution summary.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under section 1875 of the Social Security Act (the Act) (42 U.S.C. 1395ll), entitled Studies and Recommendations; section 1121 of the Act (42 U.S.C. 1121), entitled Uniform Reporting System for Health Services Facilities and Organizations; and § 1876 of the Act (42 U.S.C. 1395mm), entitled Payments to Health Maintenance Organizations and Competitive Medical Plans. Authority for maintenance and dissemination of Health Plan information is also given under the Balanced Budget Act of 1997 (Pub. L. 105–33).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this modified system is to collect and maintain information on Medicare beneficiaries enrolled in Medicare Health Plans in order to develop and disseminate information required by the Balanced Budget Act of 1997 that will inform beneficiaries and the public of indicators of health plan performance to help beneficiaries choose among health plans, support quality improvement activities within the plans, monitor and evaluate quality improvement activities within the plans, monitor and evaluate care provided by health plans; provide guidance to program management and policies, and provide a research data base for CMS and other researchers. The information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant; (2) assist another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent, for evaluating and monitoring the quality of home health care and contribute to the accuracy of health insurance operations; (3) support research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects; (4) support the functions of Quality Improvement Organizations (QIO); (5) support litigation involving the Agency; (6) combat fraud and abuse in certain health care programs.

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

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants, or to a grantee of a CMS-administered grant program who have been engaged by the agency to assist in the accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

2. To another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS' proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To assist an individual or organization for research, evaluation or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

4. To Quality Improvement Organizations (QIO) in order to assist the QIO to perform Title XI and Title XVIII functions relating to assessing and improving quality of care.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

6. To assist a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

7. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 Fed. Reg. 82462 (12–28–00), Subparts A and E. Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

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

STORAGE:

All records are stored on the magnetic disk sub-system of the Sun Solaris 10 Server. Furthermore, these records are saved to magnetic tape backup on a nightly basis.

RETRIEVABILITY:

The records are retrieved by health insurance claims number or other individually identifying numbers.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain identifiable HPMS data for at least 10 years or as long as needed for program research.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Plan Data, Plan Oversight and Accountability Group, Center for Beneficiary Choices, Center for Medicare & Medicaid Services, 7500 Security Boulevard, C4–14–21, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, HICN, address, date of birth, and gender, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORDS PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the records and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These Procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORDS SOURCE CATEGORIES:

The identifying information contained in these records is obtained from the health plan and Part D organizations (which obtained the data from the individual concerned) or the individuals themselves. Also, these data will be linked with CMS administrative data, such as claims and enrollment.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 08–72 Filed 1–11–08; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Head Start; Request for Nominations for the Secretary's Advisory Committee on Re-Designation of Head Start Grantees

AGENCY: Administration for Children and Families, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the establishment of and invites nominations for members to the Secretary's Advisory Committee on Re-Designation of Head Start Grantees. The Secretary is required by section 641 of Public Law (Pub. L.) 110–134 to convene an expert panel to provide advice and recommendations on the development of a transparent, reliable and valid system for designation renewal of Head Start grantees. The panel is required to be convened by March 12, 2008.

Nominations: We will consider nominations if they are received no later than fifteen (15) days from the date of publication of this notice. Submissions will only be taken electronically, although individuals for whom this procedure introduces a barrier may make alternative arrangements through the contact information below. Nominations in the format described below should be submitted to *colleen.rathgeb@acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, Office of Head Start, e-mail *colleen.rathgeb@acf.hhs.gov* or (202) 205–7378.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 641 of Public Law 110–134 to convene an expert panel to provide advice and recommendations on the development of a transparent, reliable and valid system for designation renewal to determine if a Head Start agency is delivering a high-quality and comprehensive Head Start program that meets the educational, health, nutritional, and social needs of the children and families it serves, and meets program and financial management requirements and the program performance standards.

The Charter requires that the panel meet up to three times. The panel shall consist of a non-voting chair and seven expert panel members who have expertise in the areas outlined below. Members of the panel serve terms up to two years based on the needs of the panel.

The Department will give close attention to equitable geographic distribution and to minority and female representation so long as the effectiveness of the Committee is not diminished.

II. Criteria for Nominees

All members must have technical expertise to enable them to participate fully in the work of the panel. The panel will consist of a non-voting chair and seven members, one member within each of the following demonstrated competency areas, as evidenced by training, expertise and experience:

- Early childhood program accreditation,
- research on early childhood development,
- governance and finance of nonprofit organizations,
- delivery of services to populations with special needs and their families,
- assessment and evaluation of programs serving young children,
- an employee of the Office of Head Start, and
- an executive director of a Head Start agency.

Any interested person or organization may nominate one or more qualified individuals. Self-nominations will also be accepted. Each nomination must include the following:

- Letter of nomination, including which specific expertise above the person is being nominated to fill,
- curriculum vitae of the nominee, and
- statement from the nominee that the nominee is willing to serve on the panel.

III. Copies of the Charter

To obtain a copy of the panel's Charter, submit a written request to the above contact.

Dated: January 8, 2008.

Daniel C. Schneider,

Acting Assistant Secretary, Administration for Children and Families.

[FR Doc. 08–88 Filed 1–11–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Administration's Transition to the Federal Dockets Management System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice that effective January 15, 2008, the public will no longer be able to submit electronic comments to its Dockets through FDA's Web site. Electronic comments to FDA's Dockets may continue to be submitted through the Federal eRulemaking Portal. In recent months, FDA has alerted the public through our published **Federal Register** documents that after the transition date, electronic submissions will only be accepted by FDA through Federal Dockets Management System (FDMS). Please note that the process for submitting written comments to FDA's Dockets will remain the same.

FOR FURTHER INFORMATION CONTACT: The Division of Dockets Management Public Room (HFA–305), Food and Drug Administration, 5630 Fishers Lane, 1061, Rockville, MD 20852, 301–827–6860, or FAX: 301–827–6870.

SUPPLEMENTARY INFORMATION:

I. Background:

FDMS is a major component of the President's e-Rulemaking Initiative, which provides easy access to the public dockets maintained by Federal agencies, while streamlining and increasing the efficiency of the internal, regulatory procedures for agencies. FDMS is designed so that the public has a single point of access to the public dockets across the Federal government and agencies have a standard, online procedure to manage and process dockets, documents, and public comments/submissions. The Initiative reduces costs by eliminating duplicative information systems and technical infrastructures.

A. What is FDMS?

FDMS is a full-featured electronic docket management system that gives Federal personnel and docket managers the ability to better manage their rulemakings, adjudications, and other docketed program activities. FDMS also provides the public with a one-stop site to search, view and download documents, as well as post comments/submissions to federal agencies.

FDMS makes it easier for all segments of the public with access to a computer and the Internet—whether at home, at work, or at a local library— to submit comments to agency dockets. FDMS is accessible on the Internet at *http://www.Regulations.gov*.

B. How Can I Access and Use FDMS?

FDMS is accessible on the Internet at *http://www.Regulations.gov*. The public may use FDMS to access available public docket materials online, as well as submit electronic comments to a particular docket available in FDMS.

C. How Can I Search FDMS?

FDMS provides two basic methods of searching to retrieve dockets and docket materials that are available in the system: (1) Quick Search to search using a full-text search engine and Browsing options or (2) Advance Search which displays various indexed fields such as

the docket name, docket identification number, agency, date of issuance, document title, document identification (ID) number, type of documents, etc. Each data field in the advance search may be searched independently or in combination with other fields, as desired. Each search yields a simultaneous display of all available information found in FDMS that is relevant to the requested subject or topic.

D. How Can I Post Comments/ Submissions to FDMS?

The public may post comments/ submissions online to FDMS on the Internet at *http://www.Regulations.gov* when a particular docket is open for public comment/submissions. For each Docket, FDA will issue a **Federal Register** notice or other document that provides information and instructions on posting comments/submissions to FDMS.

II. Migration from the Division of Dockets Management (DDM) to FDMS

A. Phased Migration

Using a phased approach, all dockets currently managed by FDA's DDM will be moved to FDMS. After the migration, the public will be able to access FDA Dockets at *Regulations.gov*. On this Web site, the public will be able to read background dockets, public comments the agency has received, etc. Due to the tremendous amount of data to be transferred from FDA's DDM to FDMS, the migration will occur over the next few months. Until a Docket is migrated, the public will continue to be able to access it through FDA's Web Site at *http://www.fda.gov/ohrms/dockets*.

B. Docket ID Numbers

Any Docket created after January 15, 2008, will receive a docket ID established by FDMS. Any Docket created on or before January 15, 2008, and migrated to FDMS will receive a docket ID established by FDMS, but it will also include a reference to its original docket (identification) number that had been assigned by FDA (legacy numbers).

III. Additional Information

Additional details about FDMS, as well as detailed instructions and assistance for using the system, are available at *http://www.Regulations.gov*.

Dated: January 8, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8–428 Filed 1–11–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Meeting of the Advisory Council on Blood Stem Cell Transplantation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of meeting of the Advisory Council on Blood Stem Cell Transplantation.

SUMMARY: Pursuant to Public Law 92–463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the first meeting of the Advisory Council on Blood Stem Cell Transplantation (ACBSCT), Department of Health and Human Services (HHS). The meeting will be held from approximately 9 a.m. to 5:30 p.m. on January 28, 2008, and from 9 a.m. to 5 p.m. on January 29, 2008, at the Hilton Washington DC/ Rockville Executive Meeting Center, 1750 Rockville Pike, MD 20852. The meeting will be open to the public; however, seating is limited and pre-registration is encouraged (see below).

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 109–129, 42 U.S.C. 274k (section 379 of the Public Health Service Act, as amended) the ACBSCT was established to advise the Secretary of HHS and the Administrator, HRSA, on matters related to the activities of the C.W. Bill Young Cell Transplantation Program (Program) and the National Cord Blood Inventory (NCBI) Program. ACBSCT is composed of up to 25 members, including the Chair, serving as Special Government Employees. The current membership includes representatives of marrow donor centers and marrow transplant centers; representatives of cord blood banks and participating birthing hospitals; recipients of a bone marrow transplant; recipients of a cord blood transplant; persons who require such transplants; family members of such a recipient or family members of a patient who has requested the assistance of the Program in searching for an unrelated donor of bone marrow or cord blood; persons with expertise in bone marrow and cord blood transplantation; persons with expertise in typing, matching, and transplant outcome data analysis; persons with expertise in the social sciences; basic scientists with expertise in the biology of adult stem cells; ethicists; hematology and transfusion medicine researchers with expertise in adult blood stem cells; persons with expertise in cord blood processing; and members of the general public.

ACBSCT will hear presentations on and discuss cord blood bank accreditation for the NCBI Program; the Food and Drug Administration's (FDA) Draft Guidance for Cord Blood Bank Licensure; Program confidentiality policies; Program registry size and composition; the Related Cord Blood Donor Demonstration Project; and the scientific factors that define a high quality cord blood unit.

The draft meeting agenda will be available on January 15, 2008, on the HRSA's Program Web site at *http://bloodcell.transplant.hrsa.gov/*.

A registration form will be available on January 7, 2008, on the HRSA's Program Web site at *http://bloodcell.transplant.hrsa.gov/*. The completed registration form should be submitted by facsimile to Professional and Scientific Associates (PSA), the logistical support contractor for the meeting, at fax number (703) 234–1701. Individuals without access to the Internet who wish to register may call Sowjanya Kotakonda with PSA at (703) 234–1737. Registration can also be completed electronically at *https://www.team-psa.com/dot/2008/acbsct/*. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACBSCT Executive Secretary, Remy Aronoff, in advance of the meeting. Mr. Aronoff may be reached by telephone at 301–443–3264, e-mail: *Remy.Aronoff@hrsa.hhs.gov* or in writing at the address provided below. Management and support services for ACBSCT functions are provided by the Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 12C–06, Rockville, Maryland 20857; telephone number 301–443–7577.

After the presentations and Council discussions, members of the public will have an opportunity to provide comments. Because of the Council's full agenda and the timeframe in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACBSCT meeting. Meeting summary notes will be made available on the HRSA's Program Web site at *http://bloodcell.transplant.hrsa.gov/*.

Dated: January 7, 2008.

Elizabeth M. Duke,

Administrator.

[FR Doc. E8–366 Filed 1–11–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Advisory Council.

Date: February 13, 2008.

Open: 8 a.m. to 12 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Stephen Mockrin, PhD, Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435–0260, *mockrins@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: January 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–83 Filed 1–11–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Institute of Environmental Health Sciences Special Emphasis Panel; Lipid Peroxidation and Antioxidant Mechanisms.

Date: February 6, 2008.

Time: 9 a.m. to 4 p.m.

Agenda: to review and evaluate grant applications.

Place: Four Points by Sheraton, 7807 Leonardo Drive, Durham, NC 27713.

Contact Person: Teresa Nesbitt, PhD., DVM, Chief, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park NC 27709, (919) 541–7571, *nesbitt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–81 Filed 1–11–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences, 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 Institute of Environmental Health Sciences Special Emphasis Panel; Expedited Review of Disaster-Based Research Opportunities.

Date: January 29, 2008.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Coference Call).

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233 MD EC–30, Research Triangle Park, NC 27709 (919) 541–1446, *eckertt1@niehs.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund

Hazardous substances-Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

January 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–82 Filed 1–11–08 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

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 meetings.

The meetings 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 Institute of Mental Health Special Emphasis Panel; Use of Antipsychotics in Children.

Date: February 4, 2008.

Time: 11:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Eating Disorders.

Date: February 5, 2008.

Time: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; ITVC Conflicts.

Date: February 20, 2008.

Time: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–84 Filed 1–11–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

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

Project: Measures of Co-Occurring Infrastructure (OMB No. 0930–0284)—Extension

This notice is a request to extend data collection for SAMHSA's Center for Mental Health Services and Center for Substance Abuse Treatment provider-level performance measures about the screening, assessment, and treatment of co-occurring disorders. The measures were developed with active input from COSIG grantees. Their input was also sought regarding suggestions for making the implementation and reporting processes as smooth as possible. Based on suggestions from COSIG grantees, CSAT has taken the following actions to improve data quality: clarified instructions, simplified minimum required reporting, developed optional reporting methods, allowed grantees time to work out internal processes, and held monthly conference calls to answer grantee questions and to allow grantees to share experiences with implementation. These steps allow CSAT to enhance working relationships with the grantees and improve the overall quality of the data collection process.

Implementation will be limited to 15 current States with Co-occurring State Incentive Grants (COSIG) and States receiving COSIG grants in future years. COSIG grants enable States to develop or enhance their infrastructure and capacity to provide accessible, effective, comprehensive, coordinated/integrated, and evidence-based treatment services to persons with co-occurring substance abuse and mental disorders. Only the immediate Office of the Governor of States may receive COSIG grants, because SAMHSA considers the Office of the Governor to have the greatest potential to provide the multi-agency leadership needed to accomplish COSIG goals. The COSIG program is part of SAMHSA's plan to achieve certain goals regarding services for persons with co-occurring substance use and mental disorders:

- Increase percentage of treatment programs that screen for co-occurring disorders;
- Increase percentage of treatment programs that assess for co-occurring disorders;
- Increase percentage of treatment programs that treat co-occurring disorders through collaborative,

consultative, and integrated models of care;

• Increase the number of persons with co-occurring disorders served.

These measures will enable SAMHSA to benchmark and track progress toward these goals within COSIG states.

Information will be collected annually about the number and percentage of programs that offer screening, assessment, and treatment services for co-occurring disorders; and the number of clients actually screened, assessed, and treated through these programs. Information will also be collected annually about providers' policies regarding screening, assessment, and treatment services for persons with co-occurring disorders.

A questionnaire, to be completed by providers, contains 47 items, answered either by checking a box or entering a number in a blank. The questionnaire is available both in printed form and electronically. Obtaining the information to enter on the questionnaire will require respondent providers to track screening, assessment, and treatment services for clients.

COSIG States will be required to report information to SAMHSA for all providers directly participating in their COSIG projects. SAMHSA will consider sampling strategies for states with large numbers of participating providers and for providers serving large numbers of clients. Annual burden for the activities is shown below:

Data collection	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Capacity to Screen, Assess, and Treat	242	1	4.5	1,089
Policy on Screening, Assessment, Referral, and Treatment	242	1	3 minutes	12
Total	242			1,101

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20857 *and* e-mail her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received within 60 days of this notice.

Dated: January 7, 2008.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E8–427 Filed 1–11–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Revision of a currently approved collection, OMB Number 1660–0011, FEMA Form 22–13.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Collection Financial System.

OMB Number: 1660–0011.

Abstract: FEMA may request debtors to provide personal financial information on FEMA Form 22–13 concerning their current financial position. With this information, FEMA evaluates whether to allow debtors to pay the FEMA debts under installment repayment agreements and if so, under what terms. FEMA also uses this data to determine whether to compromise, suspend, or completely terminate collection efforts on respondent's debts. This data is also used to locate the debtor's assets if the debts are sent for judicial enforcement.

Affected Public: Individuals or Households.

Number of Respondents: 1000.

Estimated Time per Respondent: .75 hours.

Estimated Total Annual Burden Hours: 750 hours.

Frequency of Response: Once per year.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before February 13, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: January 8, 2008.

John A. Sharetts-Sullivan,

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

[FR Doc. E8–466 Filed 1–11–08; 8:45 am]

BILLING CODE 9110–49–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3280–EM]

Oklahoma; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Oklahoma (FEMA–3280–EM), dated December 10, 2007, and related determinations.

EFFECTIVE DATE: January 3, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective January 3, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–468 Filed 1–11–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1735–DR]

Oklahoma; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–1735–DR), dated December 18, 2007, and related determinations.

EFFECTIVE DATE: January 3, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 3, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–467 Filed 1–11–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1733–DR]

Oregon; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oregon (FEMA–1733–DR), dated December 8, 2007, and related determinations.

EFFECTIVE DATE: December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oregon is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 8, 2007.

Washington County for Individual Assistance (already designated for Public Assistance.)

Coos and Curry Counties for Public Assistance.

The Confederated Tribes of Siletz located within Lincoln County and the Confederated Tribes of the Grand Ronde located within Polk and Yamhill Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–464 Filed 1–11–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1733–DR]

Oregon; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon (FEMA–1733–DR), dated December 8, 2007, and related determinations.

EFFECTIVE DATE: December 17, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 17, 2007.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–465 Filed 1–11–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–9, Employment Eligibility Verification; OMB Control No. 1615–0047.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until March 14, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail add the OMB Control Number 1615–0047 in the subject box.

Written comments and suggestions from the public and affected agencies 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: Extension of a currently approved information collection.*

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–9. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form was developed to facilitate compliance with section 274A of the Immigration and Nationality Act, which prohibits the knowing employment of unauthorized aliens. The information collected is used by employers or by recruiters for enforcement of provisions of immigration laws that are designed to control the employment of unauthorized aliens.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* This figure was derived by multiplying the number of respondents (78,000,000) × frequency of response (1) × hour per response (9 minutes or 0.15 hours). The annual recordkeeping burden is added to the total annual reporting burden which is based on 20,000,000 recordkeepers at (3 minutes or .05 hours) per filing.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,700,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/fdmspublic/component/main.* We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: January 9, 2007.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–446 Filed 1–11–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–FA–11]

Announcement of Funding Awards for the Brownfields Economic Development Initiative (BEDI) Fiscal Year 2006

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of past funding decisions made by the Department in competitions for funding under the Notice of Funding Availability (NOFA) for the Brownfields Economic Development Initiative (BEDI). This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Otto V. Banks, Deputy Assistant Secretary, Office of Economic Development, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7136, Washington, DC 20410–7000; telephone (202) 708–4091 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, call Community Connections at 1–800–998–9999 or visit the HUD Web site at *http://www.hud.gov*.

SUPPLEMENTARY INFORMATION: The Brownfields Economic Development Initiative (BEDI) is administered by the Office of Economic Development under the Assistant Secretary for Community Planning and Development. The Office of Economic Development administers HUD's ongoing grant programs to assist local governments, nonprofit organizations and the private sector in economic development efforts.

BEDI was enacted in section 108(q) of the Housing and Community Development Act of 1974, as amended. Eligible applicants include units of general local government eligible for assistance under the Community Development Block Grant (CDBG) program, as well as urban counties that are eligible under the CDBG program. Each unit of general local government or CDBG-eligible urban county must use its BEDI award to enhance the security of a loan guaranteed by HUD under section 108 of the Housing and Community

Development Act of 1974, as amended, for the same project, or to improve the viability of a project financed with the section 108-guaranteed loan. The BEDI program provides each grantee funding for the redevelopment of abandoned, idled or underutilized industrial or commercial facilities where expansion or redevelopment is complicated by environmental contamination as defined by the NOFA in each fiscal year.

On March 8, 2006, (71 FR 11712) HUD published a Super Notice of Funding Availability (SuperNOFA) announcing the availability of approximately $10,000,000 in FY 2006 funds for the BEDI program. The Department reviewed, evaluated and scored the applications received based on the criteria in the SuperNOFA. As a result, HUD funded the applications announced below, and, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

Dated: December 20, 2007.

William H. Eargle,

Deputy Assistant Secretary for Operations, Office of Community Planning and Development.

FISCAL YEAR 2006 FUNDING AWARDS FOR THE BROWNFIELDS ECONOMIC DEVELOPMENT INITIATIVE PROGRAM

Recipient	State	Amount
Mooresville	NC	$650,000.00
Rocky Mount ...	NC	1,000,000.00
Lawton	OK	1,000,000.00
Pittsburgh	PA	1,000,000.00
Reading	PA	500,000.00
Vancouver	WA	1,000,000.00
Total	.....	5,150,000.00

[FR Doc. E8–462 Filed 1–11–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Request for Nominations for the Invasive Species Advisory Committee; Extension of Submission Deadline

AGENCY: Office of the Secretary, National Invasive Species Council.

ACTION: Request for Nominations for the Invasive Species Advisory Committee; Extension of Submission Deadline.

SUMMARY: The U.S. Department of the Interior, on behalf of the interdepartmental National Invasive Species Council, proposes to appoint new members to the Invasive Species Advisory Committee (ISAC). The Secretary of the Interior, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the ISAC.

DATES: *The submission deadline for nominations has been extended.* All must now be postmarked by February 13, 2008.

ADDRESSES: Nominations should be sent to Lori Williams, Executive Director, National Invasive Species Council (OS/NISC), Regular Mail: 1849 C Street, NW., Washington, DC 20240; Express Mail: 1201 Eye Street, NW., 5th Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, Program Analyst, at (202) 513–7243, fax: (202) 371–1751, or by e-mail at *Kelsey_Brantley@ios.doi.gov*.

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

The purpose and role of the ISAC are to provide advice to the National Invasive Species Council (NISC), as authorized by Executive Order 13112, on a broad array of issues including preventing the introduction of invasive species, providing for their control, and minimizing the economic, ecological, and human health impacts that invasive species cause. NISC is Co-chaired by the Secretaries of the Interior, Agriculture, and Commerce, and is charged with providing coordination, planning and leadership regarding invasive species issues. Pursuant to the Executive Order, the Council developed a National Invasive Species Management Plan, which is available on the Web at *http://www.invasivespeciesinfo.gov*. The Council is responsible for effective implementation of the Plan including any revisions of the Plan, and also coordinates Federal agency activities concerning invasive species; encourages planning and action at local, tribal, State, regional and ecosystem-based levels; develops recommendations for international cooperation in addressing invasive species; facilitates the development of a coordinated network to document, evaluate, and monitor impacts from invasive species; and facilitates establishment of an information-sharing system on invasive species that utilizes, to the greatest extent practicable, the Internet.

The role of ISAC is to maintain an intensive and regular dialogue regarding the aforementioned issues. ISAC provides advice in cooperation with stakeholders and existing organizations addressing invasive species. The ISAC meets up to three (3) times per year.

Terms for many of the current members of the ISAC will expire in June 2008. After consultation with the other members of NISC, the Secretary of the Interior will actively solicit new nominees and appoint members to ISAC. Prospective members of ISAC should be knowledgeable in and represent one or more of the following communities of interests: weed science, fisheries science, rangeland management, forest science, entomology, nematology, plant pathology, veterinary medicine, the broad range of farming or agricultural practices, biodiversity issues, applicable laws and regulations relevant to invasive species policy, risk assessment, biological control of invasive species, public health/epidemiology, industry activities, international affairs or trade, tribal or State government interests, environmental education, ecosystem monitoring, natural resource database design and integration, and Internet-based management of conservation issues.

Prospective nominees should also have practical experience in one or more of the following areas: representing sectors of the national economy that are significantly threatened by biological invasions (e.g., agriculture, fisheries, public utilities, recreational users, tourism, etc.); representing sectors of the national economy whose routine operations may pose risks of new or expanded biological invasions (e.g., shipping, forestry, horticulture, aquaculture, pet trade, etc.); developing natural resource management plans on regional or ecosystem-level scales; addressing invasive species issues, including prevention, control and monitoring, in multiple ecosystems and on multiple scales; integrating science and the human dimension in order to create effective solutions to complex conservation issues including education, outreach, and public relations experts; coordinating diverse groups of stakeholders to resolve complex environmental issues and conflicts; and complying with NEPA and other Federal requirements for public involvement in major conservation plans. Members will be selected in order to achieve a balanced representation of viewpoints, so to effectively address invasive species issues under consideration. No member may serve on the ISAC for more than two (2) consecutive terms. All terms will be limited to three (3) years in length.

Members of the ISAC and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the ISAC, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by section 5703 of Title 5, United States Code.

Note: Employees of the Federal Government ARE NOT eligible for nomination or appointment to ISAC.

Submitting Nominations

Nominations should be typed and must include each of the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the ISAC.
2. A resume or curriculum vitae.
3. At least two (2) letters of reference.

Incomplete nominations (missing one or more of the items described above) will not be considered. *The submission deadline for nominations has been extended.* All nominations should now be postmarked no later than February 13, 2008, to Lori Williams, Executive Director, National Invasive Species Council (OS/NISC), Regular Mail: 1849 C Street, NW., Washington, DC 20240; Express Mail: 1201 Eye Street, NW., 5th Floor, Washington, DC 20005.

The Secretary of the Interior, on behalf of the other members of NISC, is actively soliciting nominations of qualified minorities, women, persons with disabilities and members of low income populations to ensure that recommendations of the ISAC take into account the needs of the diverse groups served.

Dated: January 8, 2008.

Lori C. Williams,

Executive Director, National Invasive Species Council.

[FR Doc. E8–391 Filed 1–11–08; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–DN; NMNM117880]

Notice of Intent to Prepare an Amendment to the Mimbres Resource Management Plan (RMPA), and Associated Environmental Assessment (EA), Las Cruces District, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent.

SUMMARY: The BLM Las Cruces District Office, New Mexico, intends to prepare an amendment to the Mimbres RMPA and associated EA to analyze the possible disposal, by either exchange or sale, of up to 6,002 acres of BLM-administered public land in Dona Ana County in southwestern New Mexico.

DATES: The BLM will announce public scoping meetings to identify relevant issues through local news media, newsletters, and the BLM Web site (*http://www.blm.gov/nm*) at least 15 days prior to the first meeting. We will provide formal opportunities for public participation upon publication of the Draft RMPA/EA.

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

- *Web site: http://www.blm.gov/nm.*
- *E-mail: nm_darmpea@blm.gov.*
- *Mail:* District Manager, BLM, Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.
- *Fax:* (575) 525–4412.
- *Personal delivery to the Las Cruces District Office:* see address above.

Documents pertinent to this proposal may be examined at the Las Cruces District Office at the above address. The 1993 Mimbres RMP is also posted on the following BLM Web site: *http://www.blm.gov/nm*

FOR FURTHER INFORMATION: To have your name added to our mailing list, contact Lorraine J. Salas, Realty Specialist, at the Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico; telephone number (575) 525–4388; or e-mail at *nm_darmpea@blm.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM District Office, Las Cruces, New Mexico, intends to prepare a RMPA/EA for the Mimbres Planning Area and announces public scoping meetings.

The BLM is currently considering disposing of 6,002 acres. The public land proposed for disposal is currently identified for retention in Federal ownership in the 1993 Membres RMP. The RMP must, therefore, be amended to identify the public land as suitable for exchange and/or sale. The land proposed for disposal is described as follows:

New Mexico Principal Meridian

T. 24 S., R. 1 E.
Section 6.
T. 24 S., R. 1 W.
Section 1, Section 11, Section 12.
T. 27 S. R. 1 E.
Section 13, W½NW¼SW¼, SE¼NW¼SW¼, NW¼SW¼SW¼, NE¼SW¼SW¼, SE¼SW¼SW¼, W½SE¼SW¼, SE¼SE¼SW¼;
Section 14, W½NW¼NE¼, SE¼NW¼NE¼, NW¼SW¼NE¼, NE¼SW¼NE¼, SE¼SW¼NE¼, W½SE¼NE¼, SE¼SE¼NE¼, NW¼NE¼SE¼, NE¼NE¼SE¼, SE¼NE¼SE¼;
Section 24, W½NW¼NE¼, SE¼NW¼NE¼, NW¼SW¼NE¼, NE¼SW¼NE¼, SE¼SW¼NE¼, W½SE¼NE¼, SE¼SE¼NE¼, NW¼NE¼NW¼, NE¼NE¼NW¼, SE¼NE¼NW¼, NW¼NE¼SE¼, NE¼NE¼SE¼, SE¼NE¼SE¼, NE¼SE¼SE¼.
T. 27 S., R. 2 E.
Section 19, Lots 3 and 4, SW¼SE¼SW¼;
Section 29, SW¼NW¼SW¼, SW¼SW¼, SW¼, SE¼SW¼;
Section 30, Lot 1, SW¼NW¼NE¼, SW¼NE¼, SW¼SE¼NE¼, NE¼NW¼, NE¼SE¼NW¼, NE¼SE¼, NE¼NW¼SE¼, NE¼SE¼SE¼;
Section 33, SW¼NW¼SW¼, SW¼SW¼, SW¼SE¼SW¼.
T. 28 S., R. 2 E.
Section 3, SW¼NW¼SW¼, W½SW¼SW¼, SE¼SW¼SW¼;
Section 4, Lots 2, 3, and 4, SW¼NE¼, SW¼SE¼NE¼, S½NW¼, S½;
Section 5, Lots 1 and 2, N½SE¼NE¼, SE¼SE¼NE¼;
Section 9, All;
Section 10, Lots 1, 2, 3, 6, and 7, SW¼NW¼, SW¼, SW¼SE¼;
Section 14, Lots 3 and 4, SW¼NW¼, N½SW¼, SW¼SW¼;
Section 15, All.

The planning area is located in Dona Ana County, New Mexico. This planning activity encompasses approximately 6,002 acres of public land. The Plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and National needs and concerns.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EA alternatives. These issues also guide the planning process. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit formal scoping comments within 30 days after the last

public meeting. 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date regarding the existing issues and concerns with current land management. The major issues that will be addressed in this planning effort include: wildlife and riparian habitat, rangeland resources, recreation, hazardous materials, and cultural resources.

After public comments, as to what issues the Plan should address are gathered, they will be placed in one of three categories:

1. Issues to be resolved in the Plan;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this Plan.

The BLM will provide an explanation in the Plan as to why an issue was placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the Plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

Preliminary planning criteria are:

1. The RMPA/EA process will be in compliance with FLPMA, NEPA, and applicable laws, regulations, and policies. The land use plan amendment process will be governed by the planning regulations at 43 CFR 1610 and BLM Land Use Planning Handbook H–1601–1.
2. Lands affected by the proposed plan amendment only apply to public surface and mineral estate managed by the BLM. No decisions will be made relative to non-BLM administered lands or non-Federal minerals.
3. Public participation will be an integral part of the planning process.
4. The plan amendment will recognize all valid existing rights.
5. The BLM will work with cooperating agencies, tribal governments, and other interested groups, agencies, and individuals during the RMPA/EA process.
6. The RMPA/EA will strive to be consistent with existing non-Federal plans and policies, provided the decisions in the existing plans are consistent with the purposes, policies, and programs of Federal law and regulations for BLM public land.

The BLM will use an interdisciplinary approach to develop the Plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: realty, recreation, cultural, minerals, range, wildlife, and hazardous materials.

Dated: December 21, 2007.

Linda S.C. Rundell,

State Director.

[FR Doc. 07–6282 Filed 1–11–08; 8:45 am]

BILLING CODE 4310–VC–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–417 and 731–TA–953, 954, 957–959, 961, and 962 (Review)]

Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty order on carbon and certain alloy steel wire rod from Brazil and the antidumping duty orders on carbon and certain alloy steel wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order on carbon and certain alloy steel wire rod from Brazil and the antidumping duty orders on carbon and certain alloy steel wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: January 8, 2008.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On December 10, 2007, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (72 FR 73880, December 28, 2007). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on March 24, 2008, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on April 17, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 9, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 9, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 2, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is April 28, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before April 28, 2008. On May 22, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 27, 2008, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 8, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–416 Filed 1–11–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA–615

In the Matter of Certain Ground Fault Interrupters and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting a Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 7) issued by the presiding administrative law judge (''ALJ'') granting a motion to amend the complaint and notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on September 18, 2007, based on a complaint filed by Pass & Seymour, Inc. (''Pass & Seymour'') of Syracuse, New York. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. **1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ground fault interrupters and products containing the same by reason of infringement of certain claims of U.S. Patent Nos.: 5,594,398; RE38,293; 7,154,718; 7,164,564; 7,212,386; and 7,256,973. The complaint named 15 respondents.

On November 15, 2007, Pass & Seymour filed a motion to amend the

complaint and the notice of investigation (1) to remove respondent Lunar Industrial & Electrical, Inc. from the investigation; (2) to add U.S. Patent 7,283,340 to the investigation; (3) to make changes relating to the names, addresses, and affiliations of certain respondents; and (4) to amend information relating to Harmonized Tariff Schedule item numbers. Respondent Wenzhou Trimone Science and Technology Electric Co. filed a response in opposition to the motion. The Commission investigative attorney did not oppose the motion.

On December 6, 2007, finding good cause to amend the complaint and notice of investigation, the ALJ granted the motion by ID. No petitions for review were filed. The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.14 and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.14, 210.42).

By order of the Commission.
Issued: January 4, 2008.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. E8–411 Filed 1–11–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–628]

In the Matter of: Certain Computer Products, Computer Components and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 5, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of International Business Machines Corporation of Armonk, New York. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain computer products, computer components and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,008,829; 5,249,741; and 5,371,852. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Heidi E. Strain, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2606.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 3, 2008, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain computer products, computer components and products containing same by reason of infringement of one or more of claims 1 and 2 of U.S. Patent No. 5,008,829; claim 1 of U.S. Patent No. 5,249,741; and claims 1, 8, 13, 14, 22, and 23 of U.S. Patent No. 5,371,852, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—International Business Machines Corporation, New Orchard Road, Armonk, New York 10504.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ASUSTeK Computer, Inc., 4F No. 15 Li-Te Road, Peitou Taipei, Taiwan.
ASUS Computer International, 44370 Nobel Drive, Fremont, California 94538.

(c) The Commission investigative attorney, party to this investigation, is Heidi E. Strain, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Theodore R. Essex is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or cease and a desist order or both directed against the respondent.

By order of the Commission.
Issued: January 8, 2008.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. E8–412 Filed 1–11–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–630]

In the Matter of Certain Semiconductor Chips With Minimized Chip Package Size and Products Containing Same (Iii); Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 7, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Tessera, Inc. of San Jose, California. Letters supplementing the complaint were filed on December 21 and 28, 2007. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor chips with minimized chip package size and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,679,977; 6,133,627; 5,663,106; and 6,458,681. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue exclusion orders and cease and desist orders.

ADDRESSES: The complaint except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Kecia J. Reynolds, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2580.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 3, 2008, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor chips with minimized chip package size or products containing same by reason of infringement of one or more of claims 1–4, 9, 10, and 33–35 of U.S. Patent No. 5,663,106; claims 17 and 18 of U.S. Patent No. 5,679,977; claims 1–4, 6, 9–12, 15, and 16 of U.S. Patent No. 6,133,627; and claim 4 of U.S. Patent No. 6,458,681, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Tessera, Inc., 3099 Orchard Drive, San Jose, California 95134.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

A-Data Technology Co., Ltd., 18F, No. 258, Lian Cheng Road, Chung Ho City, Taipei, Taiwan 235.

A-Data Technology (U.S.A.) Co., Ltd., 3149 Skyway Court, Fremont, California 94539.

Acer Inc., 8F, 88, Sec. 1, Hsin Tai Wu Road, Hsichih, Taipei, Hsien 221, Taiwan.

Acer America Corp., 333 W. San Carlos Street, Suite 1500, San Jose, California 95110.

Centon Electronics, Inc., 15 Argonaut, Aliso Viejo, California 92656.

Elpida Memory, Inc., Sumitomo Seimei Yaesu Building 3F, 2–1, Yaesu 2-chome, Chuo-ku, Tokyo 104–0028 Japan.

Elpida Memory (USA) Inc., 2001 Walsh Avenue, Santa Clara, California 95050.

International Products Sourcing, Group, Inc., 4119 Leap Road, Hilliard, Ohio 43026.

Kingston Technology Co., Inc., 17600 Newhope Street, Fountain Valley, California 92708.

Nanya Technology Corporation, Hwa Ya Technology Park, 669, Fu Hsing 3rd Road, Kueishan, Taoyuan 333, Taiwan.

Nanya Technology Corp. U.S.A., 675 East Brokaw Road, San Jose, California 95112.

Peripheral Devices & Products, Systems, Inc. d/b/a Patriot Memory, 47027 Benicia Street, Fremont, California 94538.

Powerchip Semiconductor Corp., No. 12, Li-Hsin 1st Road, Hsinchu Science Park, Hsinchu, Taiwan.

ProMOS Technologies Inc., No. 19, Li-Hsin Road, Hsinchu Science Park, Hsinchu, Taiwan 30078.

Ramaxel Technology Ltd., 3/F–5/F, North Block, Southeast Industrial & Commercial Building, Houhai Avenue, Shekou, Shenzhen, Guangdong, China 518067.

SMART Modular Technologies, Inc., 4211 Starboard Drive, Fremont, California 94538.

TwinMOS Technologies Inc., No. 3, Tzu Chiang Road, Hsin-Chu Industrial District, Hu Kou Xiang, Hsin-Chu, Taiwan 303.

TwinMOS Technologies USA Inc., 1649 S. Main Street, Suite 105, Milpitas, California 95035.

(c) The Commission investigative attorney, party to this investigation, is Kecia J. Reynolds, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the

right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 3, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–415 Filed 1–11–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–627]

In the Matter of Certain Short Wavelength Semiconductor Lasers and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 4, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Seoul Semiconductor Company, Ltd. of Seoul, Korea. A letter supplementing the complaint was filed on December 11, 2007. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain short wavelength semiconductor lasers and products containing same that infringe claim 1 of U.S. Patent No. 5,321,713. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 3, 2008, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain short wavelength semiconductor lasers or products containing same that infringe claim 1 of U.S. Patent No. 5,321,713, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Seoul Semiconductor Company, Ltd., 148–29 Kasan-Dong, Kuemchun-Gu, Seoul, 153–023, Korea.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Nichia Corporation, 491 Oka, Kaminaka-Cho, Anan-Shi, Tokushima 774–8601, Japan.

(c) The Commission investigative attorney, party to this investigation, is Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401Q, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 3, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–410 Filed 1–11–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–629]

In the Matter of: Certain Silicon Microphone Packages and Products Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 6, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Knowles Electronics, LLC of Itasca, Illinois.

Letters supplementing the complaint were filed on December 17 and 26, 2007. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain silicon microphone packages and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 6,781,231 and 7,242,089. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant request that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC, 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Mareesa A. Frederick, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–3052.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 3, 2008, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain silicon microphone packages or products containing same by reason of infringement of one or more of claims 1 and 2 of U.S. Patent No. 6,781,231 and claims 1, 2, 9, 10, 15, 17, 20, 28, and 29 of U.S. Patent No. 7,242,089, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Knowles Electronics, LLC, 1151 Maplewood Drive, Itasca, Illinois 60143.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

MEMS Technology Berhad, Unit 810, Block A, Pusat Dagangan Phileo II, 15 Jalan SS 16/11.
46350 Petaling Jaya, Delangor Darul Ehsan, Malaysia.

(c) The Commission investigative attorney, party to this investigation, is Mareesa A. Frederick, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–O, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Carl C. Charneski is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or cease and desist order or both directed against a respondent.

By order of the Commission.
Issued: January 3, 2008.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. E8–413 Filed 1–11–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–453 and 731–TA–1136–1137 (Preliminary)]

Sodium Nitrite From China and Germany

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of sodium nitrite, provided for in subheading 2834.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China. The Commission further determines, pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and Germany of sodium nitrite, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations concerning sodium nitrite from China and Germany. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On November 8, 2007, a petition was filed with the Commission and Commerce by General Chemical LLC, Parsippany, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of sodium nitrite from China, and by reason of LTFV imports of sodium nitrite from China and Germany. Accordingly, effective November 8, 2007, the Commission instituted countervailing and antidumping duty investigations Nos. 701–TA–453 and 731–TA–1136–1137 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 15, 2007 (72 FR 64241). The conference was held in Washington, DC, on November 27, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 26, 2007. The views of the Commission are contained in USITC Publication 3979 (January 2008), entitled *Sodium Nitrite from China and Germany: Investigation Nos. 701–TA–453 and 731–TA–1136–1137 (Preliminary).*

By order of the Commission.
Issued: January 3, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–414 Filed 1–11–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–NEW]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60–Day Notice of Information Collection Under Review: Situational Policing Officer and Neighborhood Survey.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) 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 revision of a currently approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until March 14, 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 Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Proposed collection; comments requested.

(2) Title of the Form/Collection: Situational Policing Officer and Neighborhood Survey.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: A small number of law enforcement officers and residents in the following jurisdictions: Pittsburgh, PA, Cleveland, OH, Akron, OH, and Ohio County, WV.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:

It is estimated that approximately 1,600 respondents for the neighborhood survey for an average of 15 minutes per response.

It is estimated that approximately 200 respondents for the officer survey for an average of 10 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection:

The total estimated burden is 433.5 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: January 8, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E8–386 Filed 1–11–08; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0096]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Extension of a Previously Approved Collection, With Change; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: COPS Application Guide.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS), 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 nn, Number nnn, page nnnnn on month, day, year, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 13, 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) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a previously approved collection, with change.

(2) Title of the Form/Collection: COPS Application Guide.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Law enforcement agencies and other public and private entities that apply for COPS Office discretionary grants or cooperative agreements will be asked to review the COPS Application Guide: Open Competitive Programs. The COPS Application Open/Competitive Guide is the result of a COPS Office business process reengineering effort aimed at streamlining as required under the grant streamlining requirements of Public Law 106–107, the Federal Financial Assistance Management Improvement Act of 1999, as well as the President's Management Agenda E-grants Initiative. This collection combines the previously approved collection COPS Application Guide: Targeted/Invited Programs (1103–0096) with the collection COPS Application Guide: Open/Competitive Programs (1103–0095).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 6,200 respondents annually will review the Guide within 1 hour.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 6,200 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: January 8, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E8–387 Filed 1–11–08; 8:45 am]

BILLING CODE 4410–AT–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Paperwork Reduction Act; Notice of Intent To Collect; Comment Request

AGENCY: Office of National Drug Control Policy (ONDCP).

ACTION: ONDCP provides opportunity for public comment concerning the collection of information to identify the State and local resources that support Student Drug Testing Programs in the nation's schools.

SUMMARY: This action proposes the collection of drug control information from State Educational Agencies regarding State and local support for the Student Drug Testing Programs.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this survey is to gain a greater understanding of state and local level support for Student Drug Testing Programs. Currently, Federal support for SDT programs is available through discretionary grants and the Safe and Drug Free Schools State formula grant (Title IV). The information that is collected will be used to gain a greater understanding of state and local level support for Student Drug Testing (SDT) programs so as to better target scarce Federal resources.

Type of Collection: Survey of State Educational Directors.

Title of Information Collection: Federal Safe and Drug Free Schools State formula grant (Title IV) resources supporting Student Drug Testing Programs in the nation's schools.

Frequency: Annually by fiscal year.

Affected Public: Instrumentalities of state, local, and tribal educational entities.

Estimated Burden: Minimal since State Education Agencies have pre-established reporting relationships with Local Education Agencies. LEAs receiving funds under Title IV must report on the services and activities supported by these funds.

II. Special Issues for Comment

ONDCP especially invites comments on: (a) Whether the proposed collection is necessary for the proper performance of ONDCP functions, including whether the information has practical utility; (b) ways to enhance information quality, utility, and clarity; and (c) ways to ease the burden on respondents, including the use of automated collection techniques or other forms of information technology.

ADDRESSES: Address all comments in writing within 60 days to Michael Reles. Facsimile and e-mail are the more reliable means of communication. Mr. Reles facsimile number is (202) 395–5176, and his e-mail address is *merles@ondcp.eop.gov.* Mailing address is Executive Office of the President, Office of National Drug Control Policy, Washington, DC 20503. For further information, contact Mr. Reles at (202) 395–6608.

Signed at Washington, DC, on January 8, 2008.

Daniel R. Petersen,

Assistant General Counsel.

[FR Doc. E8–451 Filed 1–11–08; 8:45 am]

BILLING CODE 3180–02–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Paperwork Reduction Act; Notice of Intent To Collect; Comment Request

AGENCY: Office of National Drug Control Policy (ONDCP).

ACTION: ONDCP provides opportunity for public comment concerning the collection of information to identify the State and local resources that support Student Drug Testing Programs in the nation's schools.

SUMMARY: This action proposes the collection of drug control information from State Educational Agencies regarding State and local support for the Student Drug Testing Programs.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this survey is to gain a greater understanding of state and local level support for Student Drug Testing Programs. Currently, Federal support for SDT programs is available through discretionary grants and the Safe and Drug Free Schools State formula grant (Title IV). The information that is collected will be used to gain a greater understanding of state and local level support for Student Drug Testing (SDT) programs so as to better target scarce Federal resources.

Type of Collection: Survey of State Educational Directors.

Title of Information Collection: Federal Safe and Drug Free Schools State formula grant (Title IV) resources supporting Student Drug Testing Programs in the nation's schools.

Frequency: Annually by fiscal year.

Affected Public: Instrumentalities of state, local, and tribal educational entities.

Estimated Burden: Minimal since State Education Agencies have pre-established reporting relationships with Local Education Agencies. LEAs receiving funds under Title IV must report on the services and activities supported by these funds.

II. Special Issues for Comment

ONDCP especially invites comments on: (a) Whether the proposed collection is necessary for the proper performance of ONDCP functions, including whether the information has practical utility; (b) ways to enhance information quality, utility, and clarity; and (c) ways to ease the burden on respondents, including the use of automated collection techniques or other forms of information technology.

ADDRESSES: Address all comments in writing within 60 days to Michael Reles. Facsimile and e-mail are the more reliable means of communication. Mr. Reles facsimile number is (202) 395–5176, and his e-mail address is *merles@ondcp.eop.gov.* Mailing address is Executive Office of the President, Office of National Drug Control Policy, Washington, DC 20503. For further information, contact Mr. Reles at (202) 395–6608.

Signed at Washington, DC, on January 9, 2008.

Edward H. Jurith,

General Counsel.

[FR Doc. E8–452 Filed 1–11–08; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 64, ''Travel Voucher'' (Part 1); NRC Form 64A, ''Travel Voucher'' (Part 2); and NRC Form 64B, ''Optional Travel Voucher'' (Part 2).

2. *Current OMB approval number:* 3150–0192.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Contractors, consultants and invited NRC travelers who travel in the course of conducting business for the NRC.

5. *The number of annual respondents:* 100.

6. *The number of hours needed annually to complete the requirement or request:* 100 hours (1 hour per form).

7. *Abstract:* Consultants, contractors, and those invited by the NRC to travel (*e.g.*, prospective employees) must file travel vouchers and trip reports in order to be reimbursed for their travel expenses. The information collected includes the name, address, social security number, and the amount to be reimbursed. Travel expenses that are reimbursed are confined to those expenses essential to the transaction of official business for an approved trip.

Submit, by March 14, 2008 comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by e-mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 8th day of January 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–417 Filed 1–11–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Implementation of Certificate of Compliance Amendments to Previously Loaded Spent Fuel Storage Casks

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a regulatory issue summary (RIS) to inform addressees of requirements concerning the implementation of changes authorized by a 10 CFR Part 72 dry storage cask Certificate of Compliance (CoC) amendment to a cask loaded under the original CoC or an earlier amendment thereto (''previously loaded cask''). The NRC will include review of this matter in future inspections to verify compliance with these requirements.

This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML073541293.

DATES: Comment period expires March 31, 2008. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSEES: Submit written comments to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T–6D59), Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Robert A. Nelson at 301–492–3294 or by e-mail at *ran@nrc.gov.*

SUPPLEMENTARY INFORMATION:

NRC Regulatory Issue Summary 2007–26

Implementation of Certificate of Compliance Amendments to Previously Loaded Spent Fuel Storage Casks

Addressees

All general licensees under the provisions of Subpart K, of Part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72, ''General License for Storage of Spent Fuel at Power Reactor Sites.''

Intent

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to inform addressees of requirements concerning the implementation of changes authorized by a 10 CFR Part 72 dry storage cask Certificate of Compliance (CoC) amendment to a cask loaded under the original CoC or an earlier amendment thereto (''previously loaded cask''). The NRC will include review of this matter in future inspections to verify compliance with these requirements. No specific action or written response is required.

Background

The NRC initially considered this issue after a general licensee sought clarification about the application of a CoC amendment to a previously loaded cask. Subsequently, during the May 2007 Nuclear Energy Institute Dry Storage Information Forum, NRC staff described agency requirements for the implementation of CoC amendments to previously loaded casks. Staff told forum participants that 10 CFR Part 72 requires licensees to obtain NRC approval if licensees wish to apply any changes of a CoC amendment to a previously loaded cask, if such changes result in a change to the terms or conditions (including the technical specifications) of the CoC under which the cask was loaded.

Some licensees have asserted that 10 CFR 72.48 allows them to apply some or all of the changes of a CoC amendment to a previously loaded cask without obtaining express NRC approval. This essentially, allows an ''upgrade'' of the CoC. NRC's position is that such an upgrade, if it involves a change to a term, condition, or specification of the CoC, would be tantamount to amending the design basis of the previously loaded cask, and as such, express NRC approval is required.

Summary of Issue

10 CFR 72.210 grants the authority to store spent fuel in an independent spent fuel storage installation (ISFSI) at power reactor sites to persons authorized to possess or operate nuclear power reactors under the provisions of 10 CFR Part 50. Regulations at 10 CFR 72.212 set forth the conditions of such a general license, including the condition that such spent fuel must be stored in casks, the design of which is approved under the provisions of 10 CFR Part 72. The NRC issues a CoC for each approved cask design.

Further, 10 CFR 72.212 requires the general licensee to notify the NRC at least 90 days before the first storage of spent fuel under the general license.[1] Thereafter, the licensee must register the use of each cask with the NRC no later than 30 days after using that cask to store spent fuel. In addition, the licensee must provide certain information, including the cask certificate number, model number, and identification number.[2] Regulations at 10 CFR 72.212 require that licensees ''[p]erform written evaluations, prior to use, that establish that: [The] conditions set forth in the Certificate of Compliance have been met.''[3] The NRC's position is that the phrase ''prior to use'' means before the cask is loaded with spent nuclear fuel.

Regulations at 10 CFR 72.212 also require that any changes made to the written evaluation required by that section must be made in accordance with 10 CFR 72.48(c), the NRC regulation governing changes, tests, and experiments made by a licensee or a certificate holder to a spent fuel storage cask design.[4] Regulations at 10 CFR 72.48(c) permit a licensee to make changes to a cask design, without obtaining express NRC approval if such changes do not require, ''a change in the terms, conditions, or specifications incorporated in the CoC.''[5]

If the CoC holder or a general licensee (through the CoC holder) desires to amend the CoC, such that the amendment results in a change to the terms, conditions, or specifications of the CoC, then the CoC holder must submit a proposed CoC amendment to NRC. Such an amendment must be approved by NRC before it can be effective.[6] Amendments for each approved cask design are listed in 10 CFR 72.214.

The NRC's practice is to consider each CoC amendment as a new design basis. Thus, each CoC amendment requires an NRC rulemaking before the amendment is effective.[7] Each CoC amendment is considered a separate and distinct CoC, accompanied by its own certificate (setting forth terms, conditions, and specifications) and safety evaluation report. Moreover, an amendment to a CoC may not amend all previous CoC amendments; thus, each succeeding amendment does not necessarily encompass all previous amendments.

Further, a previously loaded cask is bound by the terms, conditions, and specifications of the CoC under which the cask was loaded. The applicable NRC regulation states that the licensee shall:

[1] 10 CFR 72.212(b)(1)(i).

[2] 10 CFR 72.212(b)(1)(ii).

[3] 10 CFR 72.212(b)(2)(i)(A).

[4] 10 CFR 72.212(b)(ii).

[5] 10 CFR 72.48(c)(1)(ii)(B).

[6] 10 CFR 72.244 and 72.246.

[7] 54 FR 19379, 19380 (May 5, 1989) (''Storage casks certified in the future will be routinely added to the listing in § 72.214 through rulemaking procedures'').

''Maintain a copy of the Certificate of Compliance and documents referenced in the certificate for each cask model used for storage of spent fuel, until use of the cask model is discontinued. The licensee shall comply with the terms and conditions of the certificate.'' [8]

Therefore, a licensee seeking to implement changes from a later CoC amendment to a previously loaded cask must obtain NRC approval if the changes alter the terms and conditions of the CoC under which the cask was loaded. NRC approval would be in the form of an exemption.[9] Specifically, the licensee would seek an exemption from the requisite provisions of 10 CFR 72.212 and 72.214, namely: (a) 10 CFR 72.212(a)(2) (i.e., general license limited to storage of spent fuel in casks approved under the provisions of this part); (b) 10 CFR 72.212(b)(2)(i)(A) (i.e., perform written evaluations before use establishing that conditions set forth in the CoC have been met); (c) 10 CFR 72.212(b)(7) (i.e., licensee to comply with the terms and conditions of the CoC); and (d) 10 CFR 72.214 (i.e., list of each approved CoC and CoC amendment). As an example, NRC granted an exemption from these regulations to a licensee, allowing the licensee to implement a change approved in Amendment 2 to CoC 1014, for casks loaded under Amendment 1 at the licensee's ISFSI.[10]

Some general licensees have asserted that 10 CFR 72.48 provides a basis to apply CoC amendment changes to a previously loaded cask, without express NRC approval, even if such changes result in a change to the terms, conditions, or specifications of the CoC under which the cask was loaded. The NRC does not interpret 10 CFR 72.48 (nor 10 CFR 72.212) to allow for such a cask upgrade without express NRC approval. The only reference to 10 CFR 72.48 in 10 CFR 72.212 is that the licensee ''shall evaluate any changes to written evaluations required by [10 CFR 72.212(b)(2)(i)] using the requirements of § 72.48(c).'' [11] Section 72.48(c) does not expressly refer to previously loaded casks. It also does not appear to contemplate a licensee's application of a newer CoC amendment's changes, either in whole or in part, to a previously loaded cask without NRC approval. Section 72.48(c) refers only to ''cask design as described in the [final safety analysis report] FSAR.'' [12]

The October 4, 1999, Statement of Consideration to the rule that revised 10 CFR 72.48 explained the purpose of 10 CFR 72.48(c) as establishing the conditions that a licensee must meet to: (a) Make changes to cask design as described in the FSAR; (b) make changes to the procedures as described in the FSAR; or (c) conduct tests or experiments not described in the FSAR, without prior NRC approval.[13] Specifically, those conditions are that the change, test, or experiment will not require a change in the technical specifications, terms, conditions or specifications incorporated in the CoC, or will not meet any of the criteria in 10 CFR 72.48 paragraph (c)(2).[14] Failure to meet these conditions will require the licensee to seek NRC approval. By these criteria, any ''upgrade'' to the design basis of a previously loaded cask that requires a change to the terms, conditions, or specifications of that cask's CoC will require express NRC approval before the ''upgrade'' can be implemented.

Certainly, upon NRC approval of a new CoC amendment for a particular cask model, a licensee can load an empty cask of that model under that amendment, provided the loading is otherwise in accordance with 10 CFR 72.212. A previously loaded cask, however, relies upon an earlier design basis, and the licensee's use of that previously loaded cask is bounded by the terms, conditions, and specifications of the CoC under which that cask was loaded.

Backfit Discussion

This RIS only provides clarification of 10 CFR part 72, subparts L and K requirements. This RIS does not impose a regulatory staff position or interpretation of the Commission's rules that is either new or different from a previously applicable position. Further, this RIS requires no action or written response. Any addressee action in accordance with the information contained in this RIS is strictly voluntary. Thus, under the provisions of 10 CFR 50.109 and 72.62 this RIS does not constitute a backfit. Consequently, the staff did not perform a backfit analysis.

Federal Register Notification

A notice of opportunity for public comment on this RIS was published in the **Federal Register** (xx FR xxxxx), on {January xx, 2008}. Comments were received from {indicate the number of commentors by type}. The staff considered all comments. The staff's evaluation of the comments is publicly available through NRC's Agencywide Documents Access and Management System under Accession No. ML #########.

Congressional Review Act

This RIS is not a rule as designated by the Congressional Review Act (5 U.S.C. 801–808), and therefore it is not subject to the Act.

Paperwork Reduction Act Statement

This RIS does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0011, which expires on June 30, 2010, and 3150–0132, which expires on April 30, 2008.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Contact

Please direct any questions about this matter to the technical contact listed below or to the appropriate regional office.

Michael J. Case, Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

E. William Brach, Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

Technical Contact: Robert A. Nelson, NMSS, (301) 492–3294.

Enclosure: ''Recently Issued FSME/NMSS Generic Communications.''

End of Draft Regulatory Issue Summary.

[8] 10 CFR 72.212(b)(7).

[9] 10 CFR 72.7 (''The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest'').

[10] 71 FR 70551 (December 5, 2006).

[11] 10 CFR 72.212(b)(2)(ii). Section 72.212(b)(2)(i)(A)–(C) requires the licensee to perform written evaluations, before cask use, that: (a) establish that the conditions set forth in the CoC have been met; (b) the cask storage pads and areas have been designed to adequately support static and dynamic loads of the stored casks; and (c) the requirements of 10 CFR 72.104 have been met (10 CFR 72.104 concerns limiting radiation exposure from ISFSI operations).

[12] 10 CFR 72.48(c)(1).

[13] 64 FR 53582, 53609 (October 4, 1999).

[14] Paragraph (c)(2) of 10 CFR 72.48 lists additional criteria which, if triggered, require a licensee or certificate holder to obtain NRC approval for the desired change, test, or experiment, e.g., the change, test, or experiment results ''in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the FSAR (as updated).'' 10 CFR 72.48(c)(2)(i).

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 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 Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 21st day of December 2007.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Acting Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E8–424 Filed 1–11–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–151]

Notice of the Issuance of License Amendment No. 15 for the University of Illinois Nuclear Research Laboratory Triga Research Reactor and the Opportunity To Request a Hearing

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of the issuance of license amendment No. 15 and the opportunity to request a hearing.

DATES: A request for a hearing must be filed by March 10, 2008.

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:

I. Introduction

The Nuclear Regulatory Commission (NRC) has issued a license amendment to Facility Operating License R–115 that allows decommissioning of the University of Illinois's (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.

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 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.

The University of Illinois is planning unrestricted use for the area that would be released. The NRC Final Rule on License Termination, 10 CFR 20.1402, provides 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 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.

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.

II. Opportunity to Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment regarding the decommissioning of the University of Illinois NRL test reactor. Any person whose interest may be affected by this proceeding and who desires to participate as a party must file a request for a hearing and, a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 FR 49139 (Aug. 28, 2007). The E-Filing rule requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE

viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Standard Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(c)(1)(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Standard Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include social security numbers in their filings. Copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, should not be included in the submission.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by March 10, 2008.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement; and environmental assessment or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. *Technical*—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.

2. *Environmental*—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. *Emergency Planning*—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.

4. *Physical Security*—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.

5. *Miscellaneous*—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

For further details with respect to the proposed action, see the licensee's letters dated March 28, 2006 (See ADAMS ML060900623), August 20, 2007 (See ADAMS ML072550089), the Environmental Assessment and Finding of No Significant Impact (See ADAMS ML073020387), and the Safety Evaluation Report (See ADAMS ML073330022), 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 2nd day of January, 2008.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommisssioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E8–418 Filed 1–11–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting; Notice

Agency Holding the Meetings: Nuclear Regulatory Commission.

DATES: Week of January 14, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL MATTERS TO BE CONSIDERED:

Week of January 14, 2008

Monday, January 14, 2008

10 a.m.

Discussion of Adjudicatory Issues (Closed—Ex.10).

Tuesday, January 15, 2008

9:25 a.m.

Affirmation Session (Public Meeting)

a. PG&E Co. (Diablo Canyon ISFSI), Docket No. 72–26–ISFSI, San Luis Obispo Mothers for Peace's Contention and Request for Hearing Re Diablo Canyon Environmental Assessment Supplement (Tentative).

b. Pilgrim Nuclear Power Station License Renewal Pilgrim Watch's Appeal of Interlocutory Board Order Summarily Disposing of Contention 3 (SAMAs) (LBP–07–13).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/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 301–415–2279, 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: January 7, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 08–106 Filed 1–10–08; 2:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

AREVA NP Inc.; Notice of Receipt of Application for Design Certification of the U.S. EPR

Notice is hereby given that the Nuclear Regulatory Commission (NRC, the Commission) has received an application from AREVA NP Inc. (AREVA) dated December 11, 2007, filed pursuant to section 103 of the Atomic Energy Act and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, for standard design certification of the U.S. EPR Standard Plant Design.

The U.S. EPR design is an approximately 1600 megawatts electric evolutionary pressurized water reactor (PWR). The primary system design, loop configuration, and main components design are similar to those of currently operating PWRs. The U.S. EPR contains unique design features, such as four redundant trains of emergency core cooling; Containment and Shield Building, and a core melt retention system for severe accident mitigation. The U.S. EPR application includes the entire power generation complex,

except those elements and features considered site-specific. The acceptability of the tendered application for docketing and other matters relating to the requested rulemaking pursuant to 10 CFR 52.51 for design certification, including provisions for participation of the public and other parties, will be the subject of subsequent **Federal Register** notices.

A copy of the application will be available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The accession number for the application is ML073520305. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 2nd day of January 2008.

For the Nuclear Regulatory Commission.

Getachew Tesfaye,

Sr. Project Manager, EPR Projects Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–423 Filed 1–11–08; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Facility Tours

AGENCY: Postal Regulatory Commission.

ACTION: Notice of Commission Tours.

SUMMARY: Postal Regulatory Commissioners and advisory staff members will tour the Valpak Manufacturing Center in St. Petersburg, Florida on January 14, 2008, and the GameFly plant in Tampa, Florida on January 15, 2008. The purpose is to observe and discuss mailing operations.

DATES: January 14–15, 2008.

FOR FURTHER INFORMATION CONTACT: Ann Fisher, Chief of Staff, Postal Regulatory Commission, 202–789–6803.

Steven W. Williams,

Secretary.

[FR Doc. E8–394 Filed 1–11–08; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; Notice of RRB Records Used in Computer Matching

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of Records Used in Computer Matching Programs; Notification to individuals who are beneficiaries under the Railroad Retirement Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, civil service benefit and payment information obtained from the Office of Personnel Management (OPM).

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from OPM by means of a computer match.

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Harvey, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4869.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, requires a Federal agency participating in a computer matching program to publish a notice regarding the establishment of a matching program.

Name of Participating Agencies: Office of Personnel Management and Railroad Retirement Board.

Purpose of the Match: The purpose of the match is to enable the RRB to (1) identify affected RRB annuitants who are in receipt of a Federal public pension benefit but who have not reported receipt of this benefit to the RRB and (2) receive needed Federal public pension benefit information for affected RRB annuitants more timely and accurately. Previously the RRB relied on the affected annuitant to report adjustments in the amounts of such public pension benefits.

Authority for Conducting the Match: Sections 3(a)(1), 4(a)(1) and 4(f)(1) of the Railroad Retirement Act require that the RRB reduce the Railroad Retirement benefits of certain beneficiaries entitled to Railroad Retirement employee and/or spouse/widow benefits who are also entitled to a government pension based on their own non-covered earnings. This reduction is referred to as Public Service Pension offset. Section 224 of the Social Security Act provides for the reduction of disability benefits when the disabled worker is also entitled to a public disability benefit (PDB). This reduction is referred to as PDB offset. A civil service disability benefit is considered a PDB. Section 224(h)(1) requires any Federal agency to provide RRB with information in its possession that RRB may require for the purposes of making a timely determination of the amount of reduction under section 224 of the Social Security Act. Pursuant to 5 U.S.C. Section 552a(b)(3) OPM has established routine uses to disclose the subject information to RRB.

Categories of Records and Individuals Covered: The records to be used in the match and the roles of the matching participants are described as follows: OPM will provide RRB twice a year with a magnetic tape file extracted from its annuity and survivor master file of its Civil Service Retirement and Insurance Records. The Privacy Act System of Records designation is OPM/Central-1. The following information from this OPM Privacy Act System of Records will be transmitted to RRB for the approximately 2.5 million records in the system: name, social security number, date of birth, civil service claim number, first potential month and year of eligibility for civil service benefits, first month, day, year of entitlement to civil service benefits, amount of gross civil service benefits, and effective date (month, day, year) of civil service amount, and where applicable, civil service disability indicator, civil service FICA covered month indicator, and civil service total service months. The RRB will match the Social Security number, name, and date of birth contained in the OPM file against the same fields in its Master Benefit Files. The Privacy Act System of Records designations for these files is: RRB–26, ''Payment, Rate and Entitlement History File,'' as amended in 63 FR 28420 May 22, 1998. For records that are matched, the RRB will extract the civil service payment information.

Inclusive Dates of the Matching Program: The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is

later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

The notice we are giving here is in addition to any individual notice.

A copy of this notice has been or will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: January 8, 2008.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. E8–426 Filed 1–11–08; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form 40–F, OMB Control No. 3235–0381, SEC File No. 270–335.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 40–F (17 CFR 249.240f) is used by certain Canadian issuers to register securities pursuant to Section 12 of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78*l*) or as an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)). The information required under cover of Form 40–F can be used by security holders, investors, broker-dealers, investment banking firms, professional securities analysts and others in evaluating securities and making investment decisions with respect to securities of certain Canadian companies. Form 40–F takes approximately 427 hours per response and is filed by approximately 205 respondents. We estimate that 25% of the 427 hours per response (106.75 hours) is prepared by the issuer for a total reporting burden of 21,884 (106.75 hours per response × 205 responses).

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: January 3, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–351 Filed 1–11–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form CB, OMB Control No. 3235–0518, SEC File No. 270–457.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form CB (17 CFR 239.800) is a tender offer statement filed in connection with a tender offer for a foreign private issuer. This form is used to report an issuer tender offer conducted in compliance with Exchange Act Rule 13e–4(h)(8) (17 CFR 240.13e–4(h)(8)) and a third-party tender offer conducted in compliance with Exchange Act Rule 14d–1(c) (17 CFR 240.14d–1(c)). Form CB takes approximately .5 hours per response to prepare and is filed by 200 issuers annually. We estimate that 25% of the .5 hours per response (.125 hours) is prepared by issuer for an annual reporting burden of 25 hours (.125 hours per response × 200 responses). The remaining 75% of the burden hours is prepared by outside counsel.

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: January 3, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–352 Filed 1–11–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Regulations 14D and 14E; OMB Control No. 3235–0102; SEC File No. 270–114 Schedule 14D–9.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation 14D (17 CFR 240.14d–1–240.14d–11) and Regulation 14E (17

CFR 240.14e–1–240.14e–8) and related Schedule 14D–9 (17 CFR 240.14d–101) require information important to security holders in deciding how to respond to tender offers. Schedule 14D–9 takes approximately 258 hours per response to prepare and is filed by 600 companies annually. We estimate that 25% of the 258 hours per response (64.5 hours) is prepared by the company for an annual reporting burden of 38,700 hours (64.5 hours per response × 600 responses).

Written comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

January 3, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–353 Filed 1–11–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Schedule TO; OMB Control No. 3235–0515; SEC File No. 270–456.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedule TO (17 CFR 240.14d–100) must be filed by a reporting company that makes a tender offer for its own securities. Also, persons other than the reporting company making a tender offer for equity securities registered under section 12 of the Exchange Act (15 U.S.C. 78*l*) (which offer, if consummated, would cause that person to own over 5% of that class of the securities) must file Schedule TO. The purpose of Schedule TO is to improve communications between public companies and investors before companies file registration statements involving tender offer statements. Schedule TO takes approximately 43.5 hours per response and is filed by approximately 2,500 issuers annually. We estimate that 50% of the 43.5 hours per response (21.75 hours) is prepared by the issuer for an annual reporting burden of 54,375 hours (21.75 hours per response × 2,500 responses).

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: January 3, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–354 Filed 1–11–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57107; File No. SR–CTA/CQ–2007–03]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Tenth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Sixth Charges Amendment to the Restated Consolidated Quotation Plan

January 7, 2008.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on December 19, 2007,[3] the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan participants (''Participants'')[4] submitted to the Securities and Exchange Commission (''Commission'') proposals to amend the CTA and CQ Plans (collectively, the ''Plans'').[5] The proposals represent the tenth charges amendment to the Second Restatement of the CTA Plan (''Tenth Amendment to the CTA Plan'') and the sixth charges amendment to the Restated CQ Plan (''Sixth Amendment to the CQ Plan''), and reflect changes unanimously adopted by the participants. The Tenth Amendment to the CTA Plan and the Sixth Amendment to the CQ Plan (collectively, the ''Amendments'') seek to permanently extend per query pricing for Network B data to professional subscribers, following a pilot program

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The proposal was originally filed on November 27, 2007. However, it was refiled on December 7, 2007, and December 19, 2007 to reflect technical revisions made in response to the Commission's staff comments.

[4] Each Participant executed the proposed amendments. The current Participants are the American Stock Exchange LLC; Boston Stock Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; National Association of Securities Dealers, Inc. (n/k/a the Financial Industry Regulatory Authority); National Stock Exchange; New York Stock Exchange LLC; NYSE Arca, Inc.; and Philadelphia Stock Exchange, Inc.

[5] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (order approving CTA Plan); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (order temporarily approving CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (order permanently approving CQ Plan). The CTA Plan, pursuant to which markets collect and disseminate last sale price information for listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is also a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

that began on June 1, 2006. The pilot program was originally scheduled to terminate on May 31, 2007 but was extended at the May 9, 2007 CTA and CQ Operating Committee meeting until such time as the related per query pricing fee schedule for professional subscribers was made permanent by amendment to the CTA Plan and the CQ Plan.

Pursuant to Rule 608(b)(3)(i) under the Act,[6] the Participants designated the Amendments as establishing or changing a fee or other charge collected on behalf of all of the sponsors and/or participants in connection with access to, or use of, any facility contemplated by the plan or amendment. As a result, the Amendments have become effective upon filing with the Commission. At any time within 60 days of the filing of the Amendments, the Commission may summarily abrogate the Amendments and require that the Amendments be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission is publishing this notice to solicit comments from interested persons.

I. Rule 608(a)

A. Description and Purpose of the Amendments

The CTA Plan and the CQ Plan both currently provide, in attached Schedules A–3, for a usage-based, per quote fee for non-professional Network B subscribers. The fee is based on the number of quotes disseminated during a month, and is $.0075 per quote for the first 20 million quotes, $.0050 per quote for the next 20 million quotes, and $.0025 for each additional quote thereafter. This pricing schedule is an alternative to monthly display charges. Vendors may cap at $1.00 the per-quote-packet charges payable for any month in respect of any customer that qualifies as a non-professional subscriber, regardless of how many quote-packets the customer may receive during the month.

Following a pilot program that began on June 1, 2006, the Amendments propose to permanently extend the usage-based, per query pricing schedule to professional Network B subscribers as well. However, the $1.00 monthly cap described in the preceding paragraph will not apply to such professional subscribers. The text of the proposed Amendments is available on the CTA's Web site (*http://www.nysedata.com/cta*), at the principal office of the CTA, and at the Commission's Public Reference Room.

B. Additional Information Required by Rule 608(a)

1. Governing or Constituent Documents

Not applicable.

2. Implementation of the Amendments

The proposed pricing schedule for professional Network B subscribers has previously been implemented under the pilot program that began on June 1, 2006. The Amendments will make this per query pricing permanent for professional subscribers and have become effective upon filing.[7]

3. Development and Implementation Phases

See Item 2 above.

4. Analysis of Impact on Competition

The Amendments will impose no burden on competition.

5. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the CTA Plan or the CQ Plan as a result of the Amendments.

6. Approval by Sponsors in Accordance With Plan

Under Section XII(b) of the CTA Plan, each Plan Participant must execute a written amendment to the CTA Plan before the amendment can become effective. Under Section IX(b) of the CQ Plan, each CQ Plan Participant must execute a written amendment to the CQ Plan before the amendment can become effective. Both Amendments are so executed.

7. Description of Operation of Facility Contemplated by the Proposed Amendment

a. Terms and Conditions of Access

Not applicable.

b. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

c. Method of Frequency of Processor Evaluation

Not applicable.

d. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

The Network B Participants and the vendors that the proposed Amendments would affect have already entered into the Network B Participants' standard form of agreement. No new terms of access will apply.

H. Identification of Marketplace Execution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendments are 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–CTA–2007–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

[6] 17 CFR 242.608(b)(3)(i).

[7] *See id.*

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CTA/CQ–2007–03. 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 Plan Amendments that are filed with the Commission, and all written communications relating to the Plan amendments 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 the Amendments also will be available for inspection and copying at the principal office of the CTA. 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–CTA/CQ–2007–03 and should be submitted on or before February 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–348 Filed 1–11–08; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Aampro Group, Inc.; Order of Suspension of Trading

January 10, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aampro Group, Inc. (''Aampro'') because of questions regarding the adequacy and accuracy of information in Aampro's public filings concerning, among other things: (1) The company's business operations, (2) the company's business combinations, and (3) the company's current financial condition.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST January 10, 2008, through 11:59 p.m. EST on January 24, 2008.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 08–104 Filed 1–11–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57106; File No. SR–Amex–2007–36]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 To Eliminate a Volume Add-on to Amex Options Specialist Financial Requirements

January 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Amex. On December 12, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Amex options specialist financial requirements to eliminate the add-on of $25,000 for each option class in excess of the initial twenty-five issues in which the specialist is registered. The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com* and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is proposing to amend Rule 950–ANTE(h). Rule 950–ANTE(h) currently requires an option specialist to maintain minimum tentative net capital in the amount of $1,000,000 plus $25,000 for each option issue (option class) in excess of the initial twenty-five issues in which the specialist is registered. The amendment would eliminate the $25,000 add-on for each option class in excess of the initial twenty-five option classes.

Amex member firms are subject to both the Amex and the Commission's net capital rule.[3] The multiple listing of options across markets, as well as quoting obligations of registered options traders, remote registered options traders, and supplemental registered options traders now provides multiple sources of liquidity in each options class, which diminishes the role and need to highly capitalize any one liquidity provider. Therefore, the benefits of requiring Amex options specialists to maintain net capital beyond the Commission's net capital rule have been greatly reduced. Reducing the amount of capital required to be held under the Amex net capital rule also would allow options specialists to use funds previously maintained to meet Amex net capital requirements for other purposes, lowering their cost of business and helping to ensure that they can continue to function as options specialists on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[3] Rule 15c3–1 under the Act (17 CFR 240.15c3–1).

Section 6(b) of the Act [4] in general and furthers the objectives of Section 6(b)(5) [5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change; or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rulecomments@sec.gov.* Please include File No. SR–Amex–2007–36 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 No. SR–Amex–2007–36. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2007–36 and should be submitted on or before February 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–349 Filed 1–11–08; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57110; File No. SR–Amex–2007–141]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Expand, and Make Permanent, the $1 Strike Price Program

January 8, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand, and make permanent, the $1 Strike Price Program (the ''Program''). The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://www.amex.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current Program [3] permits the Exchange to select a total of five (5) individual stocks on which options series may be listed at $1 strike price intervals. To be eligible for the Program, an underlying stock must close below $20 in its primary market on the previous trading day. If selected, the Exchange may list strike prices at $1 intervals from $3 to $20; however, a $1 strike price may not be listed that is greater than $5 from the underlying stock's closing price in the primary market on the previous day. The Exchange may also list $1 strikes on any other option class designated by another options exchange that employs a similar Program approved by the Commission.

The Program prohibits the Exchange from listing $1 strikes on any series of individual equity option classes that have greater than nine (9) months until expiration. In addition, the Exchange is also restricted from listing any series that would result in strike prices being $0.50 apart.

The Exchange proposes to expand the Program to permit Amex to select a total of ten (10) individual stocks on which option series may be listed at $1 strike price intervals. The Exchange also proposes to expand the strike price range on which it may list $1 strikes. The proposed new strike price range will be $3–$50. The existing restrictions on listing strike prices will remain the same as before: (1) No strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous trading day; and (2) the Exchange is restricted from listing any series that would result in strike prices being more than $0.50 apart.

The Exchange believes that one point strike price intervals in selected equity options provide investors with more flexibility in the trading of equity options that overlie lower priced stocks by allowing investors to establish equity options positions that are better tailored to meet their investment objectives.[4] To date, the Exchange believes that the Program has been beneficial to investors and the options market by providing investors with greater flexibility in the trading of equity options that overlie stocks trading below $20. The Exchange represents that there has been a demand by member firms for the expansion of the Program, both in terms of the number of classes which can be selected and the range in which $1 strikes may be listed. The Exchange believes that by increasing the number of stocks subject to the $1 strike price intervals to ten (10) and increasing the strike price range ceiling to $50, up from $20, investors will enjoy even greater flexibility in achieving their investment objectives through various strategies. Because the Program has been very successful, the Exchange requests that the Program be approved on a permanent basis. The Exchange believes that permanent approval, along with the proposed expansion, is reasonable and consistent with the intent of the Program.

With regard to the impact on systems capacities, the Exchange represents that the overall impact on capacity is still minimal and that it has sufficient capacity to handle an expansion of the Program, as proposed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that no written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–141 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–141. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

[3] The Commission approved the Program on June 12, 2003. *See* Securities Exchange Act Release No. 48024 (June 12, 2003), 68 FR 36617 (June 18, 2003) (SR–Amex–2003–36). The Commission subsequently approved, through June 5, 2008, four (4) one-year extensions of the Program. *See* Securities Exchange Act Release Nos. 49813 (June 4, 2004), 69 FR 33088 (June 14, 2004) (SR–Amex–2004–45) (extending the Program through June 5, 2005); 51770 (May 31, 2005), 70 FR 33226 (June 7, 2005) (SR–Amex–2005–040) (extending the Program through June 5, 2006); 53843 (May 19, 2006), 71 FR 30455 (May 26, 2006) (SR–Amex–2006–49) (extending the Program through June 5, 2007); and 55714 (May 7, 2007), 72 FR 26853 (May 11, 2007) (SR–Amex–2007–43) (extending the Program through June 5, 2008).

[4] *See* Securities Exchange Act Release No. 48024 (June 12, 2003), 68 FR 36617 (June 18, 2003) (SR–Amex–2003–36).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

Number SR–Amex–2007–141 and should be submitted on or before February 4, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that the proposed expansion to permit the Exchange to select a total of 10 individual underlying stocks trading at less than $50 on which option series may be listed at $1 strike price intervals, and the request to make the Program permanent, should provide investors with added flexibility in the trading of equity options and further the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Commission also believes that the proposal strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes. The Commission notes that the existing restrictions on listing $1 strike price intervals will continue to apply, *e.g.*, no $1 strike price may be listed (a) that is greater than $5 from the underlying stock's closing price in its primary market on the previous day, or (b) that would result in strike prices being $0.50 apart.

The Commission expects the Exchange to continue to monitor for options with little or no open interest and trading activity and to act promptly to delist such options. In addition, the Commission expects that Amex will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission has recently approved a substantially similar proposal submitted by the Chicago Board Options Exchange, Incorporated, which was published for notice and comment.[9] Accelerating approval of this proposal will allow Amex the same flexibility with respect to the listing of $1 strikes, creating additional competition in the market for options listed and traded under the Program.[10] Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[11] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Amex–2007–141) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–390 Filed 1–11–08; 8:45 am]

BILLING CODE 8011–01–P

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 57049 (December 27, 2007), 73 FR 528 (January 3, 2008) (SR–CBOE–2007–125).

[10] Telephone conversation between Andrea Williams, Assistant General Counsel, Amex, and Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated January 4, 2008.

[11] 15 U.S.C. 78s(b)(2).

[12] *Id.*

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–57108; File No. SR–BSE–2007–54]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the MRVP of the Boston Options Exchange With Respect to Contrary Exercise Advice Violations

January 7, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2007, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the BSE. On January 7, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Boston Options Exchange (''BOX'') rules related to Contrary Exercise Advice violations. The text of the proposed rule change is available on the Exchange's Web site (*http://www.bostonstock.com*), at the BSE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase and strengthen the sanctions imposed pursuant to its Minor Rule Violation Plan (''MRVP'') on any member who fails to submit to the Exchange in a timely manner, pursuant to BOX Rules Chapter X, section 2(f), ''Contrary Exercise Advice Violations'' or exercise instruction relating to the exercise or nonexercise of a noncash-settled equity option. The Exchange believes that increasing the fine levels specified with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 revised the proposed rule text to clarify how fines for the third and subsequent offenses would be imposed.

respect to both individual members and member organizations and lengthening the surveillance period from a 12-month period to a rolling 24-month period will serve as an effective deterrent to such violative conduct.

In addition, the Exchange, as a member of the Intermarket Surveillance Group (''ISG'') executed and filed on October 29, 2007 with the Commission, a final version of an Agreement pursuant to section 17(d) of the Act (the ''17d–2 Agreement'').[4] As set forth in the 17d–2 Agreement, the members of the ISG have agreed that their respective rules concerning the filing of Expiring Exercise Declarations, also referred to as Contrary Exercise Advices are common rules. As a result, the proposal to amend the MRVP will further result in consistency in sanctions among the ISG members that are signatories to the 17d–2 Agreement concerning Contrary Exercise Advice violations.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to protect investors and the public interest in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Additionally, the Exchange believes that the proposed rule change will promote consistency in minor rule violations and respective SRO reporting obligations as set forth pursuant to Rule 19d–1(c)(2) under the Act,[8] which governs minor rule violation plans.

B. Self-Regulatory Organization's Statement on Burden on Competition

BSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] *See* letter to Richard Holley, Senior Special Counsel, Division of Trading and Markets, Commission, from Nyieri Nazarian, Assistant General Counsel, American Stock Exchange LLC (''Amex''), dated October 29, 2007.

[5] *See* Amex Rule 590.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 240.19d–1(c)(2).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–BSE–2007–54 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–BSE–2007–54. 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 the BSE. 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–BSE–2007–54 and should be submitted on or before February 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–388 Filed 1–11–08; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57109; File No. SR–CBOE–2007–134]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change Relating to the Continuous Quoting Obligations of DPMs

January 7, 2008.

On November 9, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to modify the continuous electronic quoting obligation of DPMs in multiply-listed option classes. The proposed rule change was published for comment in the **Federal Register** on November 29, 2007.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

CBOE proposes to reduce the continuous electronic quoting obligation of DPMs in multiply-listed option classes, and make them consistent with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56824 (November 20, 2007), 72 FR 67615.

the continuous quoting obligation of e-DPMs[4] and Lead Market-Makers in Hybrid option classes.[5] Specifically, CBOE proposes to reduce the continuous electronic quoting obligation of DPMs from 100% to at least 90% of the series of each multiply-listed option class allocated to it.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[6] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the Exchange's proposal to reduce the continuous electronic quoting obligation of DPMs from 100% to at least 90% of the series of each multiply-listed option class allocated to it is appropriate given the reduction in benefits afforded to DPMs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2007–134) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–389 Filed 1–11–08; 8:45 am]

BILLING CODE 8011–01–P

[4] *See* CBOE Rule 8.93.

[5] *See* CBOE Rule 8.15A. The Commission notes that the Exchange is not proposing to change the continuous electronic quoting obligation of DPMs in classes listed solely on CBOE.

[6] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57105; File No. SR–NASDAQ–2007–100]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change To Nasdaq's Rule 7033 to Modify the Fees Charged for the Mutual Fund Quotation Service and to Correct Certain Errors in the Rule Manual

January 4, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') 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 substantially by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the fees charged for the Mutual Fund Quotation Service (''MFQS'') and to correct certain errors in the rule manual. The text of the proposed rule change is available at *http://www.nasdaq.complinet.com,* the principal offices of Nasdaq, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq seeks retroactive approval for the implementation of MFQS fees previously approved when MFQS was operated as a facility of The National Association of Securities Dealers (''NASD'') but not transferred to the corresponding Nasdaq rule when Nasdaq commenced operations as a national securities exchange on August 1, 2006. Nasdaq is also seeking approval effective on January 1, 2008, for changes to eliminate the fee differential between News Media and Supplemental listings.

SR–NASD–2003–52

Subsection (e) of NASD Rule 7090 was approved by the Commission in connection with its approval of SR–NASD–2003–52 effective as of August 7, 2003.[3] That subsection, although approved, was inadvertently omitted from the NASD's online manual. On August 1, 2006, Nasdaq formally separated from NASD. As Nasdaq prepared to begin operating as an independent national securities exchange in 2006, it replicated sections of the NASD rule manual and proposed that they be included in the new Nasdaq rule manual in the same form.[4] Due to the inadvertent omission of subsection (e) of Rule 7090 from the NASD manual, Nasdaq failed to include that subsection in its manual (as Rule 7033). Nasdaq proposes to rectify that omission through the current rule proposal, retroactive to its separation date of August 1, 2006.

New Uniform Pricing

Nasdaq seeks to change the fees charged for the News Media and Supplemental Lists to reflect a conformity of effort by Nasdaq in providing both services. MFQS was created to collect and disseminate data pertaining to the value of open-end and closed-end mutual funds, money market funds, and unit investment trusts. MFQS has two ''lists'' in which a fund or trust may be included: (1) The News Media List and (2) the Supplemental List. The listing requirements for the News Media List are different than the listing requirements for the Supplemental List, so a fund will only qualify for one list or the other. If a fund or trust is listed on the News Media List, pricing information about the fund or trust is eligible for inclusion in the fund/trust tables of newspapers and is also eligible for dissemination over Nasdaq's Mutual Fund Dissemination Service (''MFDS'') data feed, which is distributed to market data vendors. If the fund or trust is listed on the Supplemental List, the pricing information about the fund or trust

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 48279 (August 1, 2003), 68 FR 47121 (August 7, 2003) (SR–NASD–2003–52).

[4] Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

generally is not included in newspaper fund/trust tables, but is disseminated over Nasdaq's MFDS data feed.

Historically, Nasdaq spent more time and effort compiling and disseminating the News Media List, which justified its higher fee. Over time, Nasdaq has enhanced its processes and technology; as a result, the effort it takes to compile the two lists generally is the same. Nasdaq follows similar processes in the development of the Lists: both require the same processing to set up, both are disseminated to the public over the same data feed using the same message formats, and both require the same technical support. Given the uniformity of effort, Nasdaq believes that the pricing distinction between the two Lists is no longer valid and seeks with this filing to establish a uniform price for both. The new uniform price represents a decrease in fees for the News Media List and an increase for the Supplemental List, which reflects Nasdaq's enhanced system and extended reporting session.

With this filing, Nasdaq seeks to raise the Supplemental List fee by $100 and lower the News Media List by $25 as compared to the fees currently being charged, effective on January 1, 2008. The increase reflects additional services rendered in providing the Supplemental List, and the decrease is for sake of conformity. Fees were last raised over two years ago.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with section 6(b) of the Act [5] in general, and with section 6(b)(4) of the Act,[6] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. The proposed rule change establishes new uniform MFQS fees based on increased services rendered and uniformity of effort, and also corrects certain errors in the rule manual on a retroactive basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2007–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–100. 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2007–100 and should be submitted on or before February 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–393 Filed 1–11–08; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57111; File No. SR–Phlx–2008–01]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand and Permanently Adopt the $1 Strike Pilot Program

January 8, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. Phlx filed the proposal pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange previously filed a proposed rule change that was identical in all material respects to the instant proposal pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* Securities Exchange Act Release No. 57086 (January 2, 2008)

Continued

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .05 to Phlx Rule 1012 (Series of Options Open for Trading) to expand the $1 Strike Pilot Program (''$1 Pilot'') and to request permanent approval of the $1 Pilot.[6] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.phlx.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to expand the number of options classes eligible for the $1 Pilot and the range in which $1 strikes may be listed, and to request permanent approval of the $1 Pilot, thereby providing investors with greater flexibility in the trading of equity options that overlie lower priced stocks and allowing equity options positions that are better tailored to meet investment objectives.

The $1 Pilot, under the terms set forth in Commentary .05 to Phlx Rule 1012, currently allows the Exchange to establish $1 strike price intervals on options classes overlying no more than five individual stocks designated by the Exchange where: (1) The underlying stock closes below $20 on the primary market on the trading day before selection by the Exchange; (2) the $1 strike price is from $3 to $20; (3) the $1 strike price is no more than $5 above or below the closing price of the underlying stock on the preceding day; and (4) the $1 strike price is not within $0.50 of an existing $2.50 strike price in the same series. The Exchange may not list long-term option series (''LEAPS'') at $1 strike price intervals for any class selected for the $1 Pilot. In addition, pursuant to the $1 Pilot, the Exchange may list $1 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $1 strike price program under their respective rules.

The Exchange proposes to expand the $1 Pilot to allow it to select a total of 10, instead of the current 5, individual stocks on which option series may be listed at $1 strike price intervals. Additionally, the Exchange proposes to expand the price range on which it may list $1 strikes to $3–$50, instead of the current $3–$20. The proposed expanded and permanent $1 Pilot would be known as the ''$1 Strike Program.'' The Exchange notes that the existing restrictions on listing $1 strikes would continue to apply; *i.e.*, no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day or that would result in strike prices being $0.50 apart.

As stated in the Commission order approving Phlx's $1 Pilot and in the subsequent extensions of the $1 Pilot,[7] the Exchange believes that $1 strike price intervals provide greater trading flexibility to investors so that they may better achieve their investment objectives. The Exchange states that its member firms representing customers have requested that Phlx seek to expand the $1 Pilot both in terms of the number of classes that can be selected by the Exchange and the range in which $1 strikes may be listed.

Phlx's last $1 Pilot report (the ''Report'') reviewed the Exchange's positive experience with the $1 Pilot.[8] The Exchange states that the Report showed the strength and efficacy of the $1 Pilot on the Exchange, as reflected by the increase in the percentage of $1 strikes in comparison to total options volume traded on Phlx at $1 strike price intervals and other options volume and the continuing robust open interest of options traded on Phlx at $1 strike price intervals. With regard to the impact on systems capacities, Phlx's analysis of the $1 Pilot showed that the impact on Phlx's, OPRA's, and market data vendors' respective automated systems has been negligible. The Exchange states that, as indicated in the Report, the $1 Pilot has not created, and in the future should not create, capacity problems for the systems of OPRA. Phlx represents that it has sufficient capacity to handle an expansion of the $1 Pilot, as proposed.

Finally, because the $1 Pilot has been very successful in allowing investors to establish equity options positions that are better tailored to meeting their investment objectives, Phlx requests that the $1 Pilot, as expanded, be approved on a permanent basis.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5), specifically,[10] in that it is designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and the national market system, and, in general, to protect investors and the public interest. The proposal should achieve this by allowing continued listing of options at $1 strike price intervals within certain parameters, thereby stimulating customer interest in options overlying the lowest tier of stocks and creating greater trading opportunities and flexibility and providing customers with the ability to more closely tailor investment strategies to the precise movement of the underlying stocks.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(SR–Phlx–2007–90). Phlx subsequently withdrew such proposed rule change on January 3, 2008 and filed the instant proposal for purposes of expediting effectiveness of the proposal. *See infra* note 13 and accompanying text.

[6] The Commission approved the $1 Pilot on June 11, 2003. *See* Securities Exchange Act Release No. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (SR–Phlx–2002–55). The $1 Pilot has subsequently been extended through June 5, 2008. *See* Securities Exchange Act Release Nos. 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (SR–Phlx–2004–38) (extending the $1 Pilot until June 5, 2005); 51768 (May 31, 2005), 70 FR 33250 (June 7, 2005) (SR–Phlx–2005–35) (extending the $1 Pilot until June 5, 2006); 53938 (June 5, 2006), 71 FR 34178 (June 13, 2006) (SR–Phlx–2006–36) (extending the $1 Pilot until June 5, 2007); and 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007) (SR–Phlx–2007–29) (extending the $1 Pilot until June 5, 2008). The other options exchanges have similar $1 strike price listing programs that were likewise extended through June 5, 2008.

[7] *See id.*

[8] *See* Securities Exchange Act Release No. 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007) (SR–Phlx–2007–29) (enclosing the Report as Exhibit 3 to the filing).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange states that no written comments on the proposed rule change were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can immediately implement listing rules that are similar to those of other options exchanges.[13] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will provide the Exchange's members and customers with added flexibility in the trading of equity options and promote, without undue delay, additional competition in the market for such options.[14] The Commission expects the Exchange to continue to monitor for options with little or no open interest and trading activity and to act promptly to delist such options. In addition, the Commission expects that Phlx will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–Phlx–2008–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2008–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2008–01 and should be submitted on or before February 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–350 Filed 1–11–08; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[13] *See, e.g.*, Securities Exchange Act Release No. 57049 (December 27, 2007), 73 FR 528 (January 3, 2008) (SR–CBOE–2007–125).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before March 14, 2008.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Jules Lichtenstein, Senior Economist, Office of Advocacy, Small Business Administration, 409 3rd Street, SW., 7th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jules Lichtenstein, Senior Economist, Office of Advocacy, 202–205–6537, *jules.lichtenstein@sba.gov*, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION:

Title: ''High-Tech Immigrant Entrepreneurship in the U.S.''

Description of Respondents: Firms in selected industries in the Dun and Bradstreet database that doubled in revenues and employees between 2002 and 2006.

Form No.: N/A.
Annual Responses: 1,000.
Annual Burden: 167.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 08–90 Filed 1–11–08; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 6061]

Notice of Availability of the Final Environmental Impact Statement for the Proposed TransCanada Keystone Pipeline Project

AGENCY: Department of State.
ACTION: Notice of Availability of the Final Environmental Impact Statement (FEIS) for the Proposed TransCanada Keystone Pipeline Project.

SUMMARY: This notice advises the public that the Department of State intends to file a Final Environmental Impact Statement (FEIS) for the Proposed TransCanada Keystone Pipeline Project with the U.S. Environmental Protection Agency (EPA) and that the FEIS is now available to the public for review. The proposed action is the granting by the Department of State of a Presidential permit to TransCanada Keystone Pipeline, LLC (''Keystone'') for the construction, operation, and maintenance of pipeline facilities at the border of the U.S. and Canada for the transport of crude oil across the U.S.-Canada international boundary. The pipeline would enter the United States at the U.S.-Canada border in North Dakota and travel through South Dakota, Nebraska, Kansas, Missouri, Illinois, and Oklahoma.

SUPPLEMENTARY INFORMATION: On April 19, 2006, TransCanada Keystone Pipeline, LLC (''Keystone'') filed an application for a Presidential permit for the construction, operation, and maintenance of pipeline facilities at the border of the U.S. and Canada for the transport of crude oil across the U.S.-Canada international boundary. Keystone has requested authorization to construct and operate the border crossing facilities at the U.S.-Canada border at Cavalier County, North Dakota, in connection with its proposed international pipeline project (the ''Keystone pipeline project''), which is designed to transport incremental Canadian crude oil production from the Western Canadian Sedimentary Basin (''WCSB'') to an existing refinery in Wood River, Illinois, and existing terminals in Patoka, Illinois, and Cushing, Oklahoma.

The Secretary of State is designated and empowered to receive all applications for Presidential permits, as referred to in Executive Order 13337, as amended, for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA) and to evaluate the potential environmental impacts of the proposed Keystone pipeline project. The document also evaluates alternatives to the proposal, including system alternatives and pipeline route alternatives. The FEIS contains the Department's response to timely comments received on the draft EIS that was made available to the public for review on August 9, 2007 (72 FR 44908). The FEIS also discloses that the proposed action is the preferred alternative of the Department of State.

As noted in the October 11, 2006, Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings for the TransCanada Keystone Pipeline (71 FR 59849), the Department of State used the scoping process to help identify consulting parties and historic preservation issues for consideration under Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800).

The FEIS addresses the potential environmental effects of the construction and operation of the United States portion of the Keystone Pipeline Project. In total, the Keystone Project would consist of the Mainline Project (approximately 1,078 miles of pipeline in the United States) and the Cushing Extension (293.5 miles of pipeline in the United States). Including the Cushing Extension, the total length of pipeline in the United States would be 1,371.5 miles.

The FEIS describes and evaluates the U.S. portion of the proposed Keystone Project, including both the Mainline Project and Cushing Extension, and the additional facilities required to increase throughput capacity of the pipeline to 591,000 bpd.

U.S. States and counties that could possibly be affected by construction of the proposed pipeline, including the proposed Cushing extension, are:

- North Dakota: Pembina, Cavalier, Walsh, Nelson, Steele, Barnes, Ransom, Dickey, and Sargent;
- South Dakota: Marshall, Brown, Day, Clark, Beadle, Kingsbury, Miner, Hanson, McCook, Hutchinson, and Yankton;
- Nebraska: Cedar, Wayne, Stanton, Platte, Colfax, Butler, Seward, Saline, Jefferson, and Gage;
- Kansas: Marshall, Nemaha, Brown, Washington, Clay, Dickinson, Marion, Butler, Cowley, and Doniphan;
- Missouri: Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Audrain, Montgomery, Lincoln, and St. Charles;
- Illinois: Madison, Bond, Fayette, Marion, and Clinton; and
- Oklahoma (under a possible future extension): Kay, Noble, and Payne.

Copies of the FEIS have been mailed to interested federal, state and local agencies; public interest groups; individuals and affected landowners who requested a copy of the FEIS or who provided substantive comments on the draft EIS; libraries; newspapers; and other stakeholders.

The Department intends to issue its Record of Decision (ROD) for the Keystone Pipeline Project no earlier than 30 days after the Environmental Protection Agency publishes a Notice of Availability for the FEIS in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: The TransCanada Keystone Pipeline application for a Presidential Permit, including associated maps and drawings; the FEIS; a list of libraries where the FEIS may be viewed; and other project information is available for viewing and download at the project Web site: *http://www.keystonepipeline.state.gov.*

Those wishing to comment on the FEIS, to request a CD-ROM copy of the final EIS or with additional questions, please contact Elizabeth Orlando, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520, or by telephone (202) 647–4284, or by fax at (202) 647–5947.

Issued in Washington, DC, on January 3, 2008.

Stephen J. Gallogly,
Director, International Energy and Commodity Policy, Department of State.
[FR Doc. E8–434 Filed 1–11–08; 8:45 am]
BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 6060]

Culturally Significant Objects Imported for Exhibition Determinations: ''Rembrandt: Three Faces of the Master''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to

the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Rembrandt: Three Faces of the Master'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Cincinnati Art Museum, Cincinnati, Ohio, from on or about March 7, 2008, until on or about May 21, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 7, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–433 Filed 1–11–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6059]

Culturally Significant Objects Imported for Exhibition Determinations: ''Vatican Splendors''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Vatican Splendors,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Florida International Museum, St. Petersburg, FL, from on or about February 9, 2008, until on or about May 11, 2008; The Western Reserve Historical Society, Cleveland, OH, from on or about May 31, 2008, until on or about September 9, 2008, and The Minnesota Historical Society, St. Paul, MN, from on or about September 27, 2008, until on or about January 11, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 4, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–432 Filed 1–11–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Maratime Administration

[Docket No MARAD 2006–26228]

Draft Environmental Impact Statement (EIS) for the Update of the Kahului Harbor, Maui County, HI Master Plan

AGENCY: Department of Transportation, Maritime Administration.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the U.S. Department of Transportation Maritime Administration (MARAD) announces publication of a draft EIS for improvements to Kahului Harbor, Maui County, needed to address the community's needs for commercial harbor facilities through 2030. We are issuing this notice in compliance with NEPA and implementing regulations for the following purposes: (1) To advise other agencies and the public of our action; and (2) to announce a public meeting.

DATES: Comments on this DEA must be received by February 28, 2008. The public meeting will be held on January 23, 2008, at The Cameron Center, 95 Mahalani Street Wailuku, Maui, Hawaii 96793, from 6 p.m. to 9 p.m.

To Comment on the Draft EIS: You can send written comments either to the preparers or to the Federal sponsor—By Mail: to John Kirkpatrick, Belt Collins Hawaii, 2153 N. King Street, Suite 200, Honolulu, HI, 96819.

By Mail: to Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

By the Internet: The complete application is given in DOT docket MARAD 2006–26228 at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Address requests for more information related to the EIS or requests to be added to the mailing list for this project to John Kirkpatrick, Belt Collins Hawaii, 2153 N. King Street, Suite 200, Honolulu, HI, 96819, e-mail: *jkirkpatrick@beltcollins.com*. for agency information, please contact Daniel E Yuska Jr., Environmental Protection Specialist, U.S Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC, 20590, e-mail: *daniel.yuska@dot.gov* or Dean Watase, Planning Branch, Harbors Division, Hawaii State Department of Transportation, 79 S. Nimitz Highway, Honolulu, HI 96813, e-mail: *dean.watase@hawaii.gov*.

For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to the plaza level of the Southeast Federal Center Building, 1200 New Jersey Avenue, SE., W12–140, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: The Hawaii State Department of Transportation (HI DOT) has previously conducted planning for Kahului Harbor, leading to a 2025 Master Plan and Environmental Assessment. However, demand for harbor facilities has been much greater than anticipated, and space for current operations is very tight. The 2025 Master Plan called for development of new pier and harbor space at the west breakwater of the harbor. HI DOT has conducted a new

master planning process, which has led to new alternatives to meet current and future harbor needs. The west breakwater expansion and other steps to help assure that the harbor supports the continuing prosperity and quality of life of Maui County are under consideration.

The Draft EIS addresses the following issues: (1) Demand for additional space and facilities at Kahului; (2) organization of harbor space and facilities to promote and preserve orderly cargo operations, passenger operations, and recreational activity; and (3) environmental impacts of proposed alternatives. The Preferred Alternative involves development of passenger facilities in the West Breakwater area, along with expansion of Piers 1 and 2 and development of new cargo handling areas near those piers. Significant impacts could affect corals and surf sites.

Written comments will be available at the Document Management System Web site (*http://dms.dot.gov*), as part of docket MARAD–2006–26228 at the end of the comment period.

Authority: 49 CFR 1.66.

By order of the Maritime Administrator.

Dated: January 7, 2008.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–436 Filed 1–11–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008 0002]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PAYDIRT.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0002 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before February 13, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0002. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PAYDIRT is:

Intended Use: ''6 pack sport fishing charter boat.''

Geographic Region: ''Northeast Florida—Fernandina to New Smyrna.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: January 7, 2008.

By order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–437 Filed 1–11–08; 8:45 am]

BILLING CODE 4910–81–P

Corrections

Federal Register

Vol. 73, No. 9

Monday, January 14, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF PERSONNEL MANAGEMENT

2006 Nonforeign Area Cost-of-Living Allowance Survey Report: Alaska and Washington, DC, Areas

Correction

In notice document E7–25297 beginning on page 774 in the issue of Thursday, January 3, 2008 make the following correction:

On page 805, in Appendix 7, under the heading ''PEG index'', in the 17th line, ''102.07'' should be moved to the 17th line under the heading ''MEG index''.

[FR Doc. Z7–25297 Filed 1–11–08; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
January 14, 2008

Part II

Department of Education

34 CFR Part 462

Measuring Educational Gain in the National Reporting System for Adult Education; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 462

RIN 1830–ZA06

Measuring Educational Gain in the National Reporting System for Adult Education

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary establishes procedures for determining the suitability of tests for use in the National Reporting System for Adult Education (NRS). These final regulations also include procedures that States and local eligible providers must follow when using suitable tests for NRS reporting.

DATES: These regulations are effective February 13, 2008.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of February 13, 2008. However, affected parties do not have to comply with the information collection requirements in §§ 462.10, 462.11, 462.12, 462.13, and 462.14 until the Department of Education publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Mike Dean, U.S. Department of Education, 400 Maryland Avenue, SW., Room 11152, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–7828 or via Internet: *Mike.Dean@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: These final regulations further the Department's implementation of section 212 of the Adult Education and Family Literacy Act (Act), 20 U.S.C. 9201 *et seq.*, which establishes a system to assess the effectiveness of eligible agencies in achieving continuous improvement of adult education and literacy activities.

On October 18, 2006, the Secretary published a notice of proposed rulemaking (NPRM) for 34 CFR part 462 in the **Federal Register** (71 FR 61580). In the preamble to the NPRM, the Secretary discussed on pages 61581 and 61582 the significant proposed regulations. As a result of public comment, these final regulations contain several significant changes from the NPRM. While we fully explain these changes in the *Analysis of Comments and Changes* section elsewhere in these regulations, they are summarized as follows:

- Rather than immediately establishing, in § 462.4, a deadline for State and local eligible providers to stop using tests that are currently listed in the Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education (Guidelines), the Secretary will announce a deadline in a notice published in the **Federal Register** after reviewing the first group of tests submitted under these regulations.
- On April 14, 2008, the Secretary will provide test publishers the first opportunity to submit tests for review under these final regulations. In subsequent years, in accordance with § 462.10(b), test publishers must submit applications to the Secretary by October 1 of each year.
- We have revised several sections of the regulations to distinguish between (1) traditional tests, which use items that have been generated before the test is administered, and (2) computerized tests, which use an algorithm to select test items while the test is being administered. The changes affect §§ 462.3(b) regarding the definition of *test*, 462.11 regarding the information that must be included in a test publisher's application, 462.12 and 462.13 regarding the Secretary's review of tests, and 462.41 regarding the administration of tests.
- Section 462.12(e) has been revised to clarify that test publishers can request that the Secretary reconsider a decision to revoke a determination that a test is suitable before the Secretary makes a final determination about the test's suitability for measuring educational gain for the NRS.

Through these final regulations, we formalize the process for the review and approval of tests for use in the NRS. We believe that the uniform process in these regulations will facilitate test publishers' submissions of tests to the Department for review and will help strengthen the integrity of the NRS as a critical tool for measuring State performance on accountability measures. This process also will provide a means for examining tests that are currently approved for use in the NRS, but that have not been updated recently and, therefore, need to be reassessed for their continuing validity.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 13 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We group and discuss issues under the sections of the regulations to which they pertain, with the appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and minor changes—and suggested changes the law does not authorize the Secretary to make.

General Comment

Comments: A commenter stated that, because each State uses its own curriculum frameworks, the validity of a particular test may vary to the extent that the test aligns with a State's curricula. The commenter, therefore, stated that the Department could not approve a test for use in all States without evaluating its validity for each State that uses it.

Discussion: We agree that not all States can use any single test. States are expected to select a suitable test or tests that best align with their particular curricula. If a State's curriculum is not aligned with an existing test, the State will need to develop its own test aligned with the State curriculum and submit the test to the Department for review under these final regulations.

Changes: None.

Definitions

Adult Education (§ 462.3)

Comments: A commenter stated that the proposed regulations incorrectly defined *adult education.* The commenter noted that the regulations refer to students ''who are not enrolled in secondary school'' while the Act refers to students ''who are not enrolled or required to be enrolled in secondary school under State law.'' The commenter recommended using the definition in the Act.

Discussion: Section 462.3(a) indicates that certain terms used in the regulations, including *adult education,* are defined in section 203 of the Act. The language the commenter quotes is from the definition of *adult education population* in § 462.3(b), which is not defined in the Act. Nevertheless, we agree that the two definitions should be consistent.

Changes: We have modified the definition of *adult education population* to include individuals who are not required to be enrolled in secondary school under State law in order to make it consistent with the definition of *adult education* in the Act.

Content domains and skill areas (§ 462.3)

Comments: One commenter stated that the term *skill areas* should be used consistently throughout the regulations, instead of the regulations using this term interchangeably with the terms *content domain* and *content specifications.*

Discussion: In drafting the proposed regulations, we used the terms *content domain* and *content specifications* in the sections of the regulations applicable to test publishers because those are terms of art in the test publishing industry. Likewise, the term *NRS skill areas* is used in the sections of the regulations that are applicable to States and local eligible recipients because this is a term of art in the adult education program. Although we used the term *content specifications* in the proposed regulations, we did not include it as a defined term. We think it is appropriate to do so in the final regulations because the term has the same meaning as the terms *content domains* and *NRS skill areas.*

Changes: We have modified the defined term, *content domains or NRS skill areas,* in proposed § 462.3 to also include the term *content specifications.*

Test publisher (§ 462.3)

Comments: A few commenters expressed concern that the definition of *test publisher* might be too restrictive and could prevent the review of some tests. Commenters recommended expanding the definition to include universities; adult education programs; other entities that possess sufficient expertise and capacity to develop, document, and defend assessments; entities in the process of copyrighting a test; and entities holding an unregistered copyright to a test. One commenter agreed that the Secretary should review only tests from test publishers owning a registered copyright.

Discussion: The proposed regulations did not prohibit universities, adult education programs, or other legitimate test developers from submitting a test for review. We explained in the preamble to the NPRM that entities submitting tests for the Secretary's review must be knowledgeable about the test, be able to respond to technical questions the Secretary raises during the review process, and have the legal right to submit the test for review. With regard to the recommendation to have the Secretary approve other entities who can submit a test for review, it would be inappropriate and counter-productive for the Secretary to determine the suitability of a test submitted for review without the permission of the rightful owner of a registered copyright of the test or the entity licensed by the copyright holder to sell or distribute the test.

Changes: None.

June 30, 2008, deadline for transitioning to suitable tests (§ 462.4)

Comments: Several commenters expressed concern that States might not have adequate time by the June 30, 2008, deadline to change assessment instruments, particularly if the Secretary determines that a test is no longer suitable for use in the NRS. The commenters stated that States need time to rewrite assessment policies, select replacement tests, retrain personnel, purchase materials, modify complex data systems, and, possibly, hire special contractors to assist with modifying those data systems. A different commenter stated that it might take two years to implement a change in State assessment instruments. Commenters recommended that the regulations permit a State to negotiate a practical transition timeline with the Secretary.

Commenters also recommended that, because transitioning from unsuitable tests places a burden on States' financial resources and professional development capabilities, the regulations should be deferred until the amount of funds available for State leadership becomes 15 percent of the Federal allocation. One commenter indicated that local programs often pay the significant cost of purchasing assessment instruments and that replacing an entire assessment system in a single budget year could devastate a local budget.

Discussion: Proposed § 462.4 would have permitted States and local eligible providers to continue to measure educational gain using a test that was identified in the Guidelines until June 30, 2008. However, we specifically asked for comments on whether this deadline would provide sufficient time for States and local eligible recipients to make the transition to suitable tests because we recognized that changing tests significantly affects a State's accountability system. Our intention in proposing the June 30, 2008, deadline was to ensure that States stop using unsuitable tests on a date certain but still provide enough time for (1) the Secretary to complete one review of tests and (2) States and local eligible recipients to transition from unsuitable tests to suitable tests. We also intended to impose a deadline that would result in the efficient removal of unsuitable tests from use in the NRS. Once the Secretary determines that a test is unsuitable for use in the NRS, permitting States to continue using it for long periods of time would be inconsistent with the Secretary's intent to improve data quality.

While we understand the desire to defer implementation of the regulations because of cost factors and timing constraints, improving the quality of State accountability systems and the data reported by the NRS is of immediate importance and should not be unduly delayed. Adult Education and Family Literacy Programs, like other Federal programs, must report on progress made, achievements, and overall program effectiveness using valid and reliable measures of performance. The regulations are designed to improve the reliability and validity of data used to report the educational gains of students, and thereby improve the reliability and validity of data on overall program effectiveness.

In light of the commenters' concerns, and to accommodate States' needs to make system revisions, provide training, and acquire tests, we will not specify a date in these regulations by which States and local eligible providers must cease using unsuitable tests; instead, we have provided for the Secretary to announce this deadline in a notice published in the **Federal Register**.

Changes: We have revised § 462.4 to provide that the Secretary will announce, through a notice in the **Federal Register**, a deadline by which States and local eligible providers must stop using tests that are currently listed in the Guidelines and that the Secretary has determined not to be suitable for use in the NRS under these final regulations.

Deadline for submitting tests for review by the Secretary (§ 462.10(b))

Comments: One commenter agreed that the regulations should provide an annual deadline for test publishers to submit tests to the Secretary for review. Other commenters requested clarification on when the review cycle begins and ends. Another commenter asked if the first opportunity to submit tests would be in 2007 or in 2008. Yet another commenter suggested that the date for submission of tests be no sooner than two months and no later than four months after the effective date of the final regulations.

Discussion: We are establishing April 14, 2008 as the first date by which test publishers must submit tests for review under these regulations. In subsequent years, test publishers must submit applications to the Secretary by October 1 of each year. However, because we cannot predict the number of tests that will be submitted for review nor the amount of time it will take to review the tests, it is not possible to predict how long the process will take from year to year. We, therefore, do not think it is appropriate to establish a date on which we will announce the results of the Secretary's review. We will publish the list of suitable tests well before the program year in which they might be used.

Changes: None.

Content of an application—General (§ 462.11)

Comments: A commenter responded positively to the regulations' specific delineation of what an application for test review must include. Another commenter asked whether test publishers must use a form in addition to submitting the information outlined in proposed § 462.11(b) through (j). Another commenter stated that it may be too constraining to require test publishers to arrange application information in the order established by proposed § 462.11(b) through (j).

Discussion: To facilitate the review process, the regulations in § 462.11 describe the specific requirements for the contents of an application. A test publisher is not required to submit any form or information except as required in § 462.11. We believe that organizing the information in the application in the order presented in § 462.11(b) through (j) will help to ensure that information about a test is easily available to and reviewable by the educational testing and assessment experts who will review the tests; however, to provide test publishers with some flexibility in organizing their applications, we will permit them to include in their applications a table of contents that identifies the location of the information requested in § 462.11(b) through (j).

Changes: We have revised § 462.11(a)(3)(ii) to permit test publishers to include a table of contents in their applications as an alternative to presenting information in the application in the order described in § 462.11(b) through (j).

Content of an application—Involvement of the adult education population (§ 462.11)

Comments: A commenter stated that proposed § 462.11 would generally require a test publisher to demonstrate that adult educators have been involved in a test's development and maintenance, and that some publishers would not meet that requirement easily. The commenter also stated that compliance with the regulations would require customized tests developed specifically for use in adult education, which would increase the cost and exclude some quality assessments.

Discussion: The regulations do not require a test publisher to demonstrate that adult educators have been involved in a test's development and maintenance. We realize that tests developed for other populations might not be suitable for use in the NRS because they were not developed with the adult education population in mind and do not readily measure the educational functioning levels used in the NRS. The regulations are clear that the Secretary reviews tests to determine their suitability for use in the NRS. For instance, § 462.13(a) indicates that, in order for the Secretary to consider a test suitable for use in the NRS, the test must measure the NRS educational functioning levels of members of the adult education population. Accordingly, § 462.11(c)(1)(ii) requires information that demonstrates the extent to which the adult education population was used to develop and evaluate a test, which is appropriate because the tests will be used with that population.

Changes: None.

Content of an application—Motivation of examinees (§ 462.11(c)(1)(iii))

Comments: Two commenters were concerned that test publishers would have to include information in the application on the motivation of examinees used in the development of a test. One commenter indicated that ''there is no generally accepted method for identifying and classifying the degree and level of motivation of examinees.'' The commenter stated that a test publisher could make some assumptions about motivation, but indicated that the assumptions would be subjective and not scientifically valid. The second commenter requested clarification of the expectation that examinees would be motivated.

Discussion: The regulations only require test publishers to provide in their applications information on the steps, if any, taken to ensure that examinees were motivated while responding to the test. The regulations do not require test publishers to take steps to ensure that examinees were motivated while responding to the test. Further, if a test publisher were to take such steps, the test publisher would not be required to use any particular methodology for doing so.

Changes: None.

Content of an application—Item development (§ 462.11(c))

Comments: A commenter noted that the proposed regulations did not require test publishers to include in their applications information on item selection or form development for the test under review.

Discussion: The commenter's observation is correct and calls attention to the need for the regulations to require test publishers to include this information in their applications and for the regulations to clarify the distinction between traditional tests, which use items that have been generated before the test is administered, and those that use a computerized algorithm to select test items while the test is being administered.

Changes: We added a new paragraph (3) to § 462.11(c) to require test publishers to describe in their applications the procedures used to assign items (1) to forms, for tests that are constructed prior to being administered to examinees, or (2) to examinees, for adaptive tests in which items are selected in real time.

Content of an application—Maintenance: history of test use (§ 462.11(d)(4))

Comments: A few commenters recommended that the regulations require test publishers to include in their applications additional information on the history of the test's use.

Discussion: The regulations require test publishers to provide documentation of how a test is maintained, including a history of the test's use. We are particularly interested in information on how many times the test forms have been administered. This information is useful in gauging how much the test forms have been exposed and the likelihood of test items being compromised.

Changes: We have revised § 462.11(d)(4) to clarify that information submitted in the application regarding the history of a test's use must include information on the number of times the test has been administered.

Content of an application—Maintenance (§ 462.11(d)(5))

Comments: A commenter recommended that the regulations require test publishers to include in their applications the procedures used for computerized adaptive tests to select

subsets of items for administration, determine the starting point and termination conditions, score the tests, and control item exposure.

Discussion: We agree that requiring test publishers to provide the recommended information will help experts to better assess the suitability of computerized adaptive tests for use in the NRS.

Changes: We added a new paragraph (5) to § 462.11(d) to require test publishers to include in their applications for computerized adaptive tests the information recommended by the commenter.

Content of an application—Match of content to the NRS educational functioning levels (content validity) (§ 462.11(e)(2) and (4))

Comments: A few commenters asked if proposed § 462.11(e)(2) and (4) were requesting the same information, and sought clarification regarding the difference between the paragraphs.

Discussion: The paragraphs are requesting the same information.

Changes: We have removed § 462.11(e)(4) to eliminate the duplicate information requirement and renumbered the remaining paragraphs.

Content of an application—Procedures for matching scores to NRS educational functioning levels (§ 462.11(f)(2))

Comments: A commenter stated that requiring the judgments of subject-matter experts to translate an examinee's performance to the examinee's standing with respect to the NRS educational functioning levels might not prove fruitful and would substantially increase the cost of test development. The commenter stated that determination of score ranges and their fit to the existing NRS levels can be made based on an analysis of skills being assessed and an intimate knowledge of the assessment tools being used.

Discussion: Section 462.11(f) does not require the use of subject matter experts. It requires test publishers to document the procedure they use to translate the performance of an examinee to the examinee's standing with respect to the NRS educational functioning levels. A test publisher can choose the procedure it thinks is best. However, if a test publisher chooses to use judgment-based procedures to translate performance, the regulations require the publisher to provide information on that procedure, including information concerning the subject matter experts the test publisher used. Requiring this information is consistent with accepted professional test development and standard-setting procedures in the 1999 edition of the *Standards for Educational and Psychological Testing* and will help test publishers demonstrate the suitability of their tests for measuring educational gain for the NRS.

Test scores are only useful in this context if they can accurately classify individuals according to NRS levels. Therefore, it is necessary for test publishers to demonstrate how the range of test scores map onto the NRS levels and do so in a reliable and valid fashion. In the test development process, developers need to show that the range of test scores produced on their tests covers the range of skills depicted in the NRS levels, and more importantly, shows which range of scores corresponds to a specific NRS level.

Changes: None.

Content of an application—Reliability (§ 462.11(g))

Comments: A commenter noted that in discussing reliability the proposed regulations used the phrase ''the correlation between raw or number correct scores.'' The commenter noted that this phraseology is not applicable to tests that use an adaptive structure or a multi-parameter item response theory model. The commenter stated that, in such situations, the particular items answered correctly, not the number of items answered correctly, determine the score.

Discussion: We agree with the commenter that the phrase in the regulations is not applicable to computerized adaptive tests.

Changes: We revised § 462.11(g)(1) to require that, in the case of computerized adaptive tests, test publishers document in their applications the correlation between raw (or scale) scores across alternate administrations of the test.

Comments: With regard to proposed § 462.11(g)(2), a commenter suggested that information about the number of individuals classified into NRS levels would only provide useful data if the information were submitted after the Department approved a test's scores-to-NRS-levels crosswalk. The commenter stated that requiring this information prior to test approval could produce information that is not meaningful. Another commenter responded positively to the requirement for ''inclusion of information about decision/classification consistency.''

Discussion: We do not agree that the Department should approve the rules a test publisher uses to transform the scores of a test into estimates of examinees' NRS educational functioning levels prior to the test publisher providing evidence that the transformation rules result in reliable, i.e., consistent, educational functioning level classifications. We believe that, when an application is submitted, a test publisher should be able to provide documentation of the degree of consistency in performance across different forms of the test, particularly regarding which examinees are classified into the same NRS educational functioning levels across different forms of the test. By demonstrating that a test can consistently classify individuals into the same NRS educational functioning levels across different forms of the test, the test publisher assures the Department that assessments of educational gain are the result of instruction and other interventions to improve literacy, not measurement error. Without this demonstration of classification consistency, reports of educational gain are uninterpretable. This information is very important to determinations about the suitability of a test and whether the test measures the NRS educational functioning levels as required in § 462.13(a).

Changes: None.

Content of an application—Construct validity (§ 462.11(h))

Comments: A commenter expressed concern that proposed § 462.11(h) would have required the results of several studies on the adult education population in connection with other tests designed to assess educational gain, which can be useful and meaningful, but also time-consuming and expensive. The commenter indicated that imposing this requirement after, not before, test approval would permit test publishers to collaborate and conduct the studies in a more cost-effective manner. Further, the commenter stated that the requirement could exclude some qualified assessments. The commenter recommended that the regulations be rewritten so that (1) these studies would only be required of tests that have been approved and (2) a five-year period could be provided for conducting the studies.

Discussion: We do not agree that a test should be approved for use in the NRS prior to the test publisher providing documentation of the appropriateness of a test for measuring educational gain for the NRS, i.e., documentation that the test measures what it is intended to measure. Section 462.11(h) is consistent with the 1999 edition of the *Standards for Educational and Psychological Testing,* which stresses the importance of gathering evidence of the test's

construct validity. The Secretary cannot determine whether a test is suitable for use in the NRS without having evidence of the test's construct validity.

Changes: None.

Content of an application—Construct validity (§ 462.11(h)(1))

Comments: A commenter expressed concern that proposed § 462.11(h)(1) would have required test publishers to document the appropriateness of a given test for measuring educational gain in the NRS, including the correlation between the NRS test results and the results of other tests that assess educational gain in the same adult education population. The commenter stated that this comparison could lead to faulty conclusions if the other test is not an accurate measure of the construct.

Discussion: We believe that it is appropriate to look at test correlations as one criterion for evaluating construct validity. Generally, a test should correlate with other tests known to measure the same construct, and it should not correlate (or have a very low correlation) with tests known to measure different constructs. This latter relationship depends upon the nature of the comparison constructs. To the extent that the two constructs are theoretically related, a correlation that approximates their theoretical relationship is expected.

Changes: None.

Content of an application—Construct validity (§ 462.11(h)(2))

Comments: Two commenters stated that proposed § 462.11(h)(2) should be reconsidered because ''hours of instruction'' is not a variable that correlates highly with test scores.

Discussion: Proposed § 462.11(h)(2) would have required test publishers to document that a test measures what it is intended to measure, including the extent to which the raw or scale scores are related to other relevant variables, such as hours of instruction or other important process or outcome variables. While we are aware of data establishing the relationship between Adult Basic Education (ABE) test scores and hours of instruction, the reference to ''hours of instruction'' in § 462.11(h)(2) was only intended to provide an example of a possibly relevant variable.

Changes: We have revised § 462.11(h)(2) to clarify that ''hours of instruction'' is an example of possibly relevant variables.

Content of an application—Other information (§ 462.11(i)(1))

Comments: A commenter requested clarification of the phrase ''an analysis of the effects of time on performance'' used in proposed § 462.11(i)(1). The commenter thought the phrase meant ''the effects of the time it takes to administer the test or for a student to complete it.''

Discussion: The commenter is correct. Section 462.11(i)(1) requires an application to include a description of the manner in which test administration time was determined and an analysis of the speededness of the test. The term ''speededness'' as used in § 462.11(i)(1) refers to the effects on test performance that result from the time it takes to administer or to complete the test.

Changes: We have revised § 462.11(i)(1) to clarify that we require both information on the manner in which test administration time was determined and an analysis of the speededness of the test.

Content of an application—Other information (§ 462.11(i)(5))

Comments: A commenter requested clarification of the term ''retesting procedures'' used in proposed § 462.11(i)(5). The commenter asked if the term referred to ''pre- and post-testing.''

Discussion: The term ''retesting'' as used in § 462.11(i)(5) refers to the re-administration of a test that might be necessary because of problems in the original administration (e.g., the test taker becomes ill during the test and cannot finish, there are external interruptions during testing, or there are administration errors).

Changes: We have revised § 462.11(i)(5) to clarify that ''retesting'' refers to the re-administration of a test that might be necessary because of problems in the original administration such as, the test taker becomes ill during the test and cannot finish, there are external interruptions during testing, or there are administration errors.

Content of an application—Other information (§ 462.11(i)(6))

Comments: A commenter noted that proposed § 462.11(i)(6) would require test publishers to provide such other evidence as the Secretary determines is necessary to establish the test's compliance with the criteria and requirements in proposed § 462.13. The commenter requested clarification regarding what that evidence would be.

Discussion: While § 462.11 includes the information we anticipate the Secretary will need to determine whether a test is suitable for use in the NRS, we recognize that the Secretary can require a test publisher to provide additional information to establish a test's compliance with the criteria and requirements in § 462.13. Section 462.11(i)(6) merely alerts test publishers to this possibility.

Changes: None.

Content of an application—Previous tests (§ 462.11(j))

Comments: A commenter asked if a test publisher submitting an application for a test that is currently approved for use in the NRS would have to provide the information in proposed § 462.11(b) through (i) or would have to provide only documentation of periodic review of the content and specifications of the test as specified in proposed § 462.11(j)(1).

Discussion: As indicated in § 462.11(a)(1), a test publisher must include with its application information listed in paragraphs (b) through (i) as well as the applicable information in paragraph (j). All applications must, therefore, include the information in § 462.11(b) through (i).

Changes: None.

Comments: A commenter requested clarification of the term ''periodic review'' used in proposed § 462.11(j)(1) and (2) with regard to the documentation that must be submitted for a previous test to ensure that it continues to reflect NRS educational functioning levels. The commenter asked if annual or bi-annual reviews constitute a ''periodic review,'' and suggested that the regulations use the term ''current review'' and specify the intervals for the reviews.

The commenter also suggested that the regulations address the possibility that the NRS educational functioning levels might change. The commenter stated that realigning tests to revised NRS educational functioning levels would cause a burden for test publishers, and that test publishers need at least one year advance notice of any proposed changes in the NRS educational functioning levels.

Discussion: Section 462.11(j) requires test publishers to provide specific information about currently used tests to ensure that the tests continue to reflect NRS educational functioning levels. The shorter the period of time between reviews of a test, the more relevant the results would be in determining the test's content validity with regard to NRS educational functioning levels. However, we are reluctant to specify a time-frame for reviews because we do not want to create an additional burden for test

publishers by requiring reviews more frequently than a test publisher typically would perform.

With regard to providing advance notice to test publishers about changes in the NRS educational functioning levels, in the past we have customarily provided notice to all concerned parties, including test publishers, well in advance of any changes to the NRS educational functioning levels by posting notices on the Internet at *http://www.nrsweb.org.* We intend to continue that practice and, because the educational functioning levels are included in § 462.44 of these final regulations, will publish a notice of proposed rulemaking in the **Federal Register** requesting comment on any proposed changes to § 462.44.

Changes: None.

Comments: A commenter asked if the phrase ''previous tests used in the NRS'' in proposed § 462.11(j)(1) referred only to those tests previously listed in the NRS Implementation Guidelines.

Discussion: The ''previous tests'' discussed in § 462.11(j)(1) are tests that were listed in the Guidelines and used to measure educational gain in the NRS before the effective date of these final regulations.

Changes: None.

Comments: A commenter requested clarification of the requirement in proposed § 462.11(j)(3) for test publishers to submit ''new data'' for tests that have not changed in the seven years since the Secretary determined the tests were suitable for use in the NRS.

Discussion: The intent of § 462.11(j) is to ensure that a test publisher provides specific information about a test that has been in use for years, but that has not changed in the seven years since the Secretary determined the test was suitable for use in the NRS. In this circumstance, the regulations require test publishers to provide new, i.e., updated, data that support the validity of the test.

Changes: We have revised § 462.11(j)(3) to clarify that test publishers must provide updated data to support test validity.

Computerized tests (§§ 462.3, 462.11(c)(3), 462.12(a)(2)(iii), 462.13(e), and 462.41(c)(3))

Comments: A commenter acknowledged that the proposed regulations attempted to distinguish between traditional paper-based tests and computerized tests. However, the commenter recommended that the regulations be modified to clarify that the term ''parallel forms'' refers to ''paper-based tests or computerized tests that do not involve an item selection algorithm, such as computerized adaptive tests, multistage adaptive tests, or linear on-the-fly tests.'' The commenter suggested specifically changing the proposed regulatory language from ''and have two or more secure, parallel, equated forms'' to ''and have two or more secure, parallel forms if the test is produced before it is administered to a learner (e.g., paper-based tests). If the test uses a computerized algorithm for administering items in real time, the size of the item pool and the method of item selection must ensure negligible overlap in items across pre- and post-test.'' Another commenter also emphasized the importance of recognizing computerized tests.

Discussion: As we have discussed elsewhere in this notice, we agree that the regulations should clarify the distinction between (1) traditional tests, which use items that are generated before the test is administered, and (2) computerized tests, which use an algorithm to select test items while the test is being administered.

Changes: We have revised §§ 462.3 (the definition of *test*), 462.11(c)(3), 462.12(a)(2)(iii), 462.13(e), and 462.41(c)(3) to provide the clarification recommended by the commenters.

Tests that measure some, but not all, educational functioning levels (§§ 462.12(a)(2)(iv) and 462.13(b))

Comments: A commenter requested clarification on whether the Secretary will review tests that currently measure only some, but not all, educational functioning levels.

Discussion: The regulations provide for the Secretary to review tests that measure some, but not all, educational functioning levels. Sections 462.12(a)(2)(iv) and 462.13(b) indicate that the Secretary reviews and determines the suitability of a test if an application includes a test that samples one or more of the major content domains of the NRS educational functioning levels of Adult Basic Education (ABE), Adult Secondary Education (ASE), or English-As-A-Second Language (ESL) with sufficient numbers of questions to represent adequately the domain or domains. Further, § 462.12(b)(2) provides flexibility for the Secretary to determine that a test or a sub-test is suitable for use in the NRS if it measures the content domain of some, but not all, of the NRS educational functioning levels.

Changes: None.

Procedures the Secretary uses to review the suitability of tests (§ 462.12(b))

Comments: A commenter asked if the results of the Secretary's review of a test would be posted for public review. Another commenter suggested that the regulations should provide that test publishers be notified at least 30 days before the Secretary notifies States and local eligible providers that a test is unsuitable for use in the NRS. With regard to tests that the Secretary determines are unsuitable, a different commenter recommended that the regulations provide a time-frame by which the Secretary would review any additional information submitted by the test publisher and make a final determination.

Discussion: In accordance with § 462.12(c)(2), the Secretary will annually notify the public through a notice published in the **Federal Register** and posted on the Internet at *http://www.nrsweb.org* of tests that are suitable for use in the NRS. Under § 462.12(e)(5), the Secretary will follow the same procedure to notify the public when a test that was previously determined suitable is determined to be unsuitable. However, the Secretary will not post for public review the Secretary's determination regarding a test that has not been previously reviewed and that the Secretary determines to be unsuitable. We do not believe this is necessary because the Secretary's determination regarding these tests will not have an impact on the public, States, or local eligible providers.

Proposed § 462.12(d) provided that a test publisher would have 30 days to request that the Secretary reconsider the decision that a test is unsuitable. Therefore, it will be after this 30-day period that the Secretary will notify the public of a decision regarding a test.

Because it is impossible to anticipate the complexities that might be involved in decisions regarding a test that was initially determined to be unsuitable, we do not believe it would be appropriate to limit the time the Secretary takes to review additional information provided by a test publisher and make a final determination regarding the suitability of a test. However, we intend to conduct the review as expeditiously as possible.

Changes: None.

Publishing the list of suitable tests (§ 462.12(c))

Comments: A commenter suggested that if tests must be submitted for review by October 1 of each year, the test publisher and adult education programs should be informed of which

tests are approved no later than February 1 of the following year.

Discussion: Within a reasonable time-frame, the Secretary will review tests, notify test publishers of the results of the review, and provide States and local eligible providers with a list of suitable tests. However, because we cannot predict the number of tests that will be submitted for review nor the amount of time it will take to review the tests, it is not possible to predict how long the process will take from year to year. We, therefore, do not think it is appropriate to establish a date by which we will announce the results of the Secretary's review. We will publish the list of suitable tests well before the program year in which they can be used.

Changes: None.

Revocation of determination that a test is suitable (§ 462.12(e))

Comments: A commenter suggested that test publishers be notified of the Secretary's decision to revoke a determination that a test is suitable before the Secretary notifies the general public. The commenter stated that test publishers should be given sufficient time to address the Secretary's concerns before the Secretary revokes the determination that the test is suitable. This would provide a process comparable to the process proposed for a test that the Secretary determines is unsuitable.

Discussion: We agree that test publishers should have an opportunity to address the Secretary's decision to revoke a determination that a test is suitable before that determination becomes a final decision.

Changes: We have revised § 462.12(e) to give test publishers an opportunity to request that the Secretary reconsider a decision to revoke a determination that a test is unsuitable.

Comments: A commenter stated that proposed § 462.14(b) was unclear concerning the reasons a test's seven-year approval status might be revoked.

Discussion: Section 462.12(e), not § 462.14(b), establishes the reasons for which the Secretary can revoke the determination regarding the suitability of a test. In the proposed regulation, we stated that the Secretary can revoke the determination if the Secretary determines that the information submitted as a basis for the Secretary's review of the test was inaccurate. In proposed § 462.14(b), however, we implied that the Secretary also could revoke a determination regarding the suitability of a test if the test is substantially revised—for example, by changing its structure, number of items, content specifications, item types or sub-tests.

The proposed regulations were, therefore, unclear as to whether the Secretary could revoke a determination about the suitability of a test if the test had been substantially revised. We intended that revision of a test would be a valid reason for revoking a determination about test suitability.

Changes: We have revised § 462.12(e) to clarify that substantial changes to a test is one of the reasons the Secretary can revoke a determination regarding the suitability of a test.

Criteria and requirements for determining test suitability (§ 462.13(c)(1), (d), and (f)(3) (proposed (g)(3))

Comments: A commenter noted that *The Standards for Educational and Psychological Testing* referenced in § 462.13(c) provides specific guidelines for the technical documentation, including evidence of validity that should be made available to interested parties. The commenter recommended clarifying that publishers should provide the Secretary with information regarding test development and validity.

Discussion: In proposed § 462.13(c)(1), we indicated that, in order for a test to be determined suitable for use in the NRS, the test would have to meet all applicable and feasible standards for test construction provided in *The Standards for Educational and Psychological Testing.* We did not intend this language to imply that the Secretary would review only information that is related to test development. We agree with the commenter that validity is an important factor in test evaluation and make it clear in § 462.11(e) through (g), that test publishers must include in their applications information on content validity, reliability, and construct validity. However, we think adding the reference to ''validity'' in § 462.13(c)(1) will reinforce the importance of test publishers providing information on validity.

Changes: We have revised § 462.13(c)(1) to require a test to meet all applicable and feasible standards for test construction and validity that are provided in the *Standards for Educational and Psychological Testing.*

Comments: A commenter noted that many factors influence the appropriate time between testing and retesting, including intensity of instruction, frequency and length of class meetings, and class size. The commenter wanted to ''decrease the emphasis on a single protocol for post-testing'' and suggested that, when discussing the time between test-taking, the regulations use the term ''publisher's recommendations'' instead of the term ''publisher's guidelines'' that was used in proposed §§ 462.13(d) and 462.40(c)(3)(ii).

Discussion: We do not agree that the term ''publisher's guidelines'' emphasizes the use of a single protocol when determining when to administer a post-test. State and local eligible providers, like the commenter, are aware that many factors influence the appropriate time between pre-testing and post-testing. These factors are taken into consideration by test administrators at the local level. However, because tests differ, test administrators rely on the guidelines, developed during test construction and validation and provided by test publishers, to help ensure that a sufficient amount of time has passed before a post-test is given in order to optimize the measurement of educational gains.

Changes: None.

Comments: A commenter requested clarification of § 462.13(f)(3) (proposed § 462.13(g)(3)), which requires the publisher of a test modified for an individual with a disability to recommend educational functioning levels based on the previous performance of test-takers who are members of the adult education population of interest to the NRS in order for the Secretary to consider a test suitable for use.

Discussion: In order for the Secretary to consider a test that has been modified for individuals with disabilities suitable for use in the NRS, test publishers must (1) demonstrate that adult education students with disabilities were included in the pilot or field test referred to in § 462.11(c)(1); (2) match scores to the NRS educational functioning levels based on the information obtained from adult education students with the disability who participated in the pilot or field test and for whom the test has been adapted; and (3) provide in the application, as required in § 462.11(f), documentation of the adequacy of the procedure used to translate the performance of adult education students with the disability for whom the test has been modified to an estimate of the examinees' standing with respect to the NRS educational functional levels.

Changes: In response to the comment, we changed § 462.13(f)(3) to clarify that the Secretary considers a test modified for individuals with disabilities suitable for use in the NRS if test publishers (1) recommend educational functioning levels based on the information obtained from adult education students who participated in the pilot or field test and who have the disability for

which the test has been adapted and (2) provide documentation of the adequacy of the procedure used to translate the performance of adult education students with the disability for whom the test has been modified to an estimate of the examinees' standing with respect to the NRS educational functional levels.

Subpart D—General (§§ 462.40–462.44)

Comments: Several commenters noted that the Department currently provides non-regulatory guidance to States on the NRS. The commenters asked why the Department is issuing regulations when most States comply with and are successfully implementing the non-regulatory guidance and the guidance provides each State with needed flexibility. The commenters stated that ''as long as States are complying with guidelines and meeting performance standards, we understand that the Federal role is to limit regulations and allow the States to continually increase their capabilities to improve program services.'' The commenters, therefore, recommended that subpart D be removed from the final regulations and that the Secretary provide technical assistance and resources to the few States that are having difficulty creating effective assessment and data procedures. Additionally, one of these commenters stated that while guidance is valued, regulations sometimes seem arbitrary, intrusive, and unnecessary.

Discussion: It is the Department's policy to regulate only when essential to promote quality, and then in the most flexible, most equitable, and least burdensome way possible. We believe these regulations comply with that policy. While the regulations in subpart D are legally binding, they largely codify the guidance provided in the Guidelines and the ''State Assessment Policy Guidance.'' Although States have made significant progress, there remains variability in the quality of State processes and procedures in the collection and reporting of data on student assessment and performance. These regulations, like the Guidelines, technical assistance activities, and other efforts the Department has supported to improve data quality, provide a significant tool to create a standard level of quality among all States and thereby strengthen the integrity of the NRS as a critical tool for measuring State performance and the impact of adult education.

Changes: None.

Meaning of the term ''placement'' (§§ 462.40(c)(4), (c)(6) and (c)(10), 462.41(c)(3) (proposed), 462.42(a), (b)(2), and (c)(1), (d)(1), and (d)(2), and 462.43(a)(2) and (b))

Comments: A few commenters stated that using the term ''placement'' in the regulations to mean the ''assignment of a student to the appropriate NRS educational functioning level'' is confusing because the traditional meaning of placement is ''placing a student in a particular class or other instructional offering.'' Commenters noted that tests designed for placement are different from those used to measure educational gain.

Discussion: The regulations, like the Guidelines currently used by States, use the terms ''place'' and ''placement'' as terms of art to refer to the placement of students in NRS educational functioning levels in order to measure and then report on educational gain in the NRS. It is only within this context that the terms are used, and no other meaning should be inferred.

Changes: None.

Placing students (§ 462.42(d)(1) and (2))

Comments: A commenter stated that placing a student in an NRS educational functioning level using the lowest test score could result in programs providing instruction in skill areas that are not most relevant to the student. Further, the commenter stated that programs (1) should not place students based on one test and (2) should be allowed to use multiple placement tools and other pertinent information, such as student goals, to determine placement. Another commenter stated that all scores have some measurement error and that instituting a policy of using the lowest test score might introduce systematic, rather than random, measurement errors. This commenter also indicated that the policy of using the lowest test score could encourage programs to teach students only in an area where gain is to be expected. The commenter stated that a better policy would be either to focus on the learner's primary subject area at pre-test, or evaluate gain based on a composite score across areas.

Discussion: With regard to placing a student using the lowest test score when the student is tested in multiple skill areas, § 462.42(d)(1) and (2) are consistent with the policy in the Guidelines, which indicates: ''States should provide to local programs the criteria for placing students at each educational functioning level, using test scores from the initial assessment. Not all of the skill areas described in the [functioning] level descriptors need to be used to place students, but the skill used should be the areas most relevant to the students' needs and the program's curriculum. If multiple skill areas are assessed and the student has differing abilities in each area, however, NRS policy requires that the program place the student according to the lowest skill area.'' The Department's policy ensures that States use a standardized approach when reporting educational gain, which ensures comparability of data. These regulations use the term ''placement'' as a term of art to refer to the placement of students in NRS educational functioning levels in order to measure and then report on educational gain in the NRS. Placement of a student in an educational functioning level for NRS purposes does not affect placement in an instructional program. States can use a variety of tools when devising an instructional program for students. States and local eligible providers know that using the lowest test score is a convention used for reporting purposes and it is not intended to encourage programs to teach students only in skill areas in which students scored the lowest on tests or only in skill areas in which gain is expected. The policy also is not intended to restrict the number or type of assessments used to identify a student's needs and to customize an instructional program to meet those needs. In fact, programs are expected to teach students in multiple areas depending on the students' needs and the programs' curricula.

We do not agree with the commenter that using the lowest test score might introduce systematic, rather than random, measurement error. Using the lowest test score in order to operationalize educational gain in a consistent manner across States for reporting purposes is error free. If tests have met the standards established in these regulations, they should be able to assess skills at any level with minimum error.

Changes: None.

Measuring educational gain (§ 462.43)

Comments: A commenter suggested the Department measure significant gain as determined by test developers. The commenter thought this approach would be the most accurate measure of gain. The commenter opposed the approach in proposed § 462.43, stating that it would only capture learning gain when a learner completes an educational functioning level by crossing artificial cut points regardless of the starting level. Another commenter stated that the approach for measuring gain in § 462.43 is ''too coarse, is likely

to capture only extreme gain, and will miss very significant educational gains that occur within an EFL [educational functioning level].'' The commenter suggested that the Department consider using other options for demonstrating educational gain such as ''achieving a gain score that is beyond chance expectations (using a scale score, which is more reliable than a proficiency classification).'' Another commenter stated that ''awarding only one educational gain to students completing more than one educational functioning level to a high degree misrepresents and under reports the effectiveness and accomplishment of both adult teacher and learner.'' This commenter also stated that the current NRS policy of reporting an educational gain for obtaining a General Educational Development (GED) diploma by learners in ASE II, but not to those in ABE or ASE I, misrepresents and under-reports accomplishments. A different commenter suggested that attainment of a GED diploma should be recognized as an educational gain.

Discussion: The approach for measuring educational gain in § 462.43 is well established and accepted by the field. Over a two-year period, the Department consulted with States and convened a statutorily mandated panel in order to develop a performance accountability system for the adult education program. During that time, consensus was reached on defining the performance measures, including how to measure educational gain. States and other participating entities agreed that the approach in § 462.43 is the most effective means of obtaining accurate, reliable, and valid information on student performance.

Changes: None.

High Advanced ESL (§ 462.44)

Comments: Some commenters opposed proposed § 462.44 because it, like the Guidelines, eliminated the ''High Advanced ESL'' literacy level from the Functioning Level Table. The commenters noted that the change means that State and local agencies will no longer be able to report educational gain for adult English language learners above the ''Advanced ESL'' literacy level or Student Performance Level (SPL) 6. The commenters stated that, based on communications with the Department's Office of Vocational and Adult Education (OVAE), the change also means that programs can no longer provide ''High Advanced ESL'' instruction in adult education programs. The commenters indicated that OVAE has suggested that students who would have received ''High Advanced ESL'' instruction should now complete their preparation by moving from ESL classes to either adult basic education or adult secondary education classes. The commenters expressed their belief that OVAE's suggestion is pedagogically problematic and, more importantly, would prevent programs from adequately addressing the learning needs of ESL learners. Further, the commenters opposed stopping ESL instruction at the ''Advanced ESL'' literacy level or SPL 6 because they believe students at that level do not have language and literacy skills that are sufficient to transition successfully to postsecondary education or to meet the demands of the workplace—two of the purposes for adult education that are cited in the Act. Commenters noted that the regulations do not place this same restriction on native English speakers and recommended that the ''High Advanced ESL'' literacy level be restored to the Functioning Level Table. Finally, the commenters recommended that the regulations provide States with flexibility and not limit program services.

Discussion: Commenters are correct in that proposed § 462.44 would codify a change in the Guidelines by eliminating the ''High Advanced ESL'' literacy level from the Functioning Level Table. The change was made in 2006 as part of the information collection request for the Guidelines. However, before the change was made, (1) OVAE consulted with Adult Education State Directors and (2) the Office of Management and Budget (OMB) provided interested Federal agencies and the public, including States and local eligible providers, an opportunity to comment on the information collection request, which included the removal of the ''High Advanced ESL'' literacy level from the Functioning Level Table. We received no negative comments regarding our intent to eliminate the ''High Advanced ESL'' literacy level, and therefore, changed the Functioning Level Table in the Guidelines and in the proposed regulations.

The change in the Functioning Level Table does not mean that adult education programs can no longer provide services to ''High Advanced ESL'' students. These regulations are consistent with the Act, which authorizes services below the postsecondary level, and do not change who can be served by adult education programs. The educational functioning levels largely serve to classify students for reporting purposes and should not be viewed as the standard for establishing the type of instruction that can be provided. Placement of a student in an educational functioning level for NRS purposes does not affect placement in an instructional program. A student who scores above an SPL 6 might still be served in adult education programs if he or she has an educational need below the postsecondary level. States have the flexibility to determine how programs are structured, how students are placed in programs, and how instruction is delivered.

Changes: None.

Student Performance Levels (SPL) (§ 462.44)

Comments: A commenter requested clarification of the relationship between the NRS literacy levels and SPLs in the Functioning Level Table. The commenter indicated that no exact definition of SPL levels is provided and, therefore, their relationship to the NRS levels is unclear.

Discussion: The SPLs were developed by the Center for Applied Linguistics to provide a standard description of adult refugees' abilities at a range of levels and a common standard for ESL level descriptions for use by programs nationwide. They are nationally recognized in the adult ESL education community and represent a standard metric for identifying skill levels of adult ESL students in general language ability, listening comprehension, and oral communication. The Functioning Level Table provides educational functioning level descriptors for students at literacy levels in ABE, ASE, and ESL. The literacy levels are divided into equivalent grade levels for ABE and ASE and into SPLs for ESL. The descriptors illustrate the types of skills students functioning at a given level are likely to have. The descriptors do not provide a complete or comprehensive delineation of all the skills at a particular level, but instead, provide examples to guide assessment and instruction.

Changes: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations,

we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM under the headings *Significant Proposed Regulations* (pages 61581 and 61582), *Regulatory Flexibility Act Certification* (pages 61582 and 61583), and *Paperwork Reduction Act of 1995* (page 61583).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. With the exception of §§ 462.10 through 462.14, we display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

These regulations are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 462

Administrative practice, Adult education, Grants program—education, Incorporation by reference, and Reporting and recordkeeping requirements.

Dated: January 7, 2008.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by adding a new part 462 to read as follows:

PART 462—MEASURING EDUCATIONAL GAIN IN THE NATIONAL REPORTING SYSTEM FOR ADULT EDUCATION

Subpart A—General

Sec.

462.1 What is the scope of this part?
462.2 What regulations apply?
462.3 What definitions apply?
462.4 What are the transition rules for using tests to measure educational gain for the National Reporting System for Adult Education (NRS)?

Subpart B—What Process Does the Secretary Use To Review the Suitability of Tests for Use in the NRS?

462.10 How does the Secretary review tests?
462.11 What must an application contain?
462.12 What procedures does the Secretary use to review the suitability of tests?
462.13 What criteria and requirements does the Secretary use for determining the suitability of tests?
462.14 How often and under what circumstances must a test be reviewed by the Secretary?

Subpart C—[Reserved]

Subpart D—What Requirements Must States and Local Eligible Providers Follow When Measuring Educational Gain?

462.40 Must a State have an assessment policy?
462.41 How must tests be administered in order to accurately measure educational gain?
462.42 How are tests used to place students at an NRS educational functioning level?
462.43 How is educational gain measured?
462.44 Which educational functioning levels must States and local eligible providers use to measure and report educational gain in the NRS?

Authority: 20 U.S.C. 9212, unless otherwise noted.

Subpart A—General

§ 462.1 What is the scope of this part?

The regulations in this part establish the—

(a) Procedures the Secretary uses to determine the suitability of standardized tests for use in the National Reporting System for Adult Education (NRS) to measure educational gain of participants in an adult education program required to report under the NRS; and

(b) Procedures States and local eligible providers must follow when measuring educational gain for use in the NRS.

(Authority: 20 U.S.C. 9212)

§ 462.2 What regulations apply?

The following regulations apply to this part:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement)).

(10) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(11) 34 CFR part 97 (Protection of Human Subjects).

(12) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(13) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 462.

(Authority: 20 U.S.C. 9212)

§ 462.3 What definitions apply?

(a) *Definitions in the Adult Education and Family Literacy Act (Act).* The following terms used in these regulations are defined in section 203 of the Adult Education and Family Literacy Act, 20 U.S.C. 9202 (Act):

Adult education,
Eligible provider,
Individual of limited English proficiency,
Individual with a disability,
Literacy.

(b) *Other definitions.* The following definitions also apply to this part:

Adult basic education (ABE) means instruction designed for an adult whose educational functioning level is equivalent to a particular ABE literacy level listed in the NRS educational functioning level table in § 462.44.

Adult education population means individuals—

(1) Who are 16 years of age or older;

(2) Who are not enrolled or required to be enrolled in secondary school under State law; and

(3) Who—

(i) Lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

(ii) Do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(iii) Are unable to speak, read, or write the English language.

Adult secondary education (ASE) means instruction designed for an adult whose educational functioning level is equivalent to a particular ASE literacy level listed in the NRS educational functioning level table in § 462.44.

Content domains, content specifications, or NRS skill areas mean, for the purpose of the NRS, reading, writing, and speaking the English language, numeracy, problem solving, English language acquisition, and other literacy skills as defined by the Secretary.

Educational functioning levels mean the ABE, ASE, and ESL literacy levels, as provided in § 462.44, that describe a set of skills and competencies that students demonstrate in the NRS skill areas.

English-as-a-second language (ESL) means instruction designed for an adult whose educational functioning level is equivalent to a particular ESL literacy level listed in the NRS educational functioning level table in § 462.44.

Guidelines means the *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (also known as NRS Implementation Guidelines) posted on the Internet at: *http://www.nrsweb.org.* A copy of the Guidelines is also available from the U.S. Department of Education, Division of Adult Education and Literacy, 400 Maryland Avenue, SW., room 11159, Potomac Center Plaza, Washington, DC 20202–7240.

Local eligible provider means an ''eligible provider'' as defined in the Act that operates an adult education program that is required to report under the NRS.

State means ''State'' and ''Outlying area'' as defined in the Act.

Test means a standardized test, assessment, or instrument that has a formal protocol on how it is to be administered. These protocols include, for example, the use of parallel, equated forms, testing conditions, time allowed for the test, standardized scoring, and the amount of instructional time a student needs before post-testing. Violation of these protocols often invalidates the test scores. Tests are not limited to traditional paper and pencil (or computer-administered) instruments for which forms are constructed prior to administration to examinees. Tests may also include adaptive tests that use computerized algorithms for selecting and administering items in real time; however, for such instruments, the size of the item pool and the method of item selection must ensure negligible overlap in items across pre- and post-testing.

Test administrator means an individual who is trained to administer tests the Secretary determines to be suitable under this part.

Test publisher means an entity, individual, organization, or agency that owns a registered copyright of a test or is licensed by the copyright holder to sell or distribute a test.

(Authority: 20 U.S.C. 9202, 9212)

§ 462.4 What are the transition rules for using tests to measure educational gain for the National Reporting System for Adult Education (NRS)?

A State or a local eligible provider may continue to measure educational gain for the NRS using a test that was identified in the Guidelines until the Secretary announces through a notice published in the **Federal Register** a deadline by which States and local eligible providers must use only tests that the Secretary has reviewed and determined to be suitable for use in the NRS under this part.

(Approved by the Office of Management and Budget under control number 1830–0027)

(Authority: 20 U.S.C. 9212)

Subpart B—What Process Does the Secretary Use To Review the Suitability of Tests for Use in the NRS?

§ 462.10 How does the Secretary review tests?

(a) The Secretary only reviews tests under this part that are submitted by a test publisher.

(b) A test publisher that wishes to have the suitability of its test determined by the Secretary under this part must submit an application to the Secretary, in the manner the Secretary may prescribe, by April 14, 2008, and, thereafter, by October 1 of each year.

(Authority: 20 U.S.C. 9212)

§ 462.11 What must an application contain?

(a) *Application content and format.* In order for the Secretary to determine whether a standardized test is suitable for measuring the gains of participants in an adult education program required to report under the NRS, a test publisher must—

(1) Include with its application information listed in paragraphs (b) through (i) of this section, and, if applicable, the information listed in paragraph (j) of this section;

(2) Provide evidence that it holds a registered copyright of a test or is licensed by the copyright holder to sell or distribute a test.

(3)(i) Arrange the information in its application in the order it is presented in paragraphs (b) through (j) of this section; or

(ii) Include a table of contents in its application that identifies the location of the information required in paragraphs (b) through (j) of this section.

(4) Submit to the Secretary three copies of its application.

(b) *General information.* (1) A statement, in the technical manual for the test, of the intended purpose of the test and how the test will allow examinees to demonstrate the skills that are associated with the NRS educational functioning levels in § 462.44.

(2) The name, address, e-mail address, and telephone and fax numbers of a contact person to whom the Secretary may address inquiries.

(3) A summary of the precise editions, forms, levels, and, if applicable, sub-tests and abbreviated tests that the test publisher is requesting that the Secretary review and determine to be suitable for use in the NRS.

(c) *Development.* Documentation of how the test was developed, including a description of—

(1) The nature of samples of examinees administered the test during pilot or field testing, such as—

(i) The number of examinees administered each item;

(ii) How similar the sample or samples of examinees used to develop and evaluate the test were to the adult education population of interest to the NRS; and

(iii) The steps, if any, taken to ensure that the examinees were motivated while responding to the test; and

(2) The steps taken to ensure the quality of test items or tasks, such as—

(i) The extent to which items or tasks on the test were reviewed for fairness and sensitivity; and

(ii) The extent to which items or tasks on the test were screened for the adequacy of their psychometric properties.

(3) The procedures used to assign items to—

(i) Forms, for tests that are constructed prior to being administered to examinees; or

(ii) Examinees, for adaptive tests in which items are selected in real time.

(d) *Maintenance.* Documentation of how the test is maintained, including a description of—

(1) How frequently, if ever, new forms of the test are developed;

(2) The steps taken to ensure the comparability of scores across forms of the test;

(3) The steps taken to maintain the security of the test;

(4) A history of the test's use, including the number of times the test has been administered; and

(5) For a computerized adaptive test, the procedures used to—

(i) Select subsets of items for administration;

(ii) Determine the starting point and termination conditions;

(iii) Score the test; and

(iv) Control for item exposure.

(e) *Match of content to the NRS educational functioning levels (content validity).* Documentation of the extent to which the items or tasks on the test cover the skills in the NRS educational functioning levels in § 462.44, including—

(1) Whether the items or tasks on the test require the types and levels of skills used to describe the NRS educational functioning levels;

(2) Whether the items or tasks measure skills that are not associated with the NRS educational functioning levels;

(3) Whether aspects of a particular NRS educational functioning level are not covered by any of the items or tasks;

(4) The procedures used to establish the content validity of the test;

(5) The number of subject-matter experts who provided judgments linking the items or tasks to the NRS educational functioning levels and their qualifications for doing so, particularly their familiarity with adult education and the NRS educational functioning levels; and

(6) The extent to which the judgments of the subject matter experts agree.

(f) *Match of scores to NRS educational functioning levels.* Documentation of the adequacy of the procedure used to translate the performance of an examinee on a particular test to an estimate of the examinee's standing with respect to the NRS educational functioning levels in § 462.44, including—

(1) The standard-setting procedures used to establish cut scores for transforming raw or scale scores on the test into estimates of an examinee's NRS educational functioning level;

(2) If judgment-based procedures were used—

(i) The number of subject-matter experts who provided judgments, and their qualifications; and

(ii) Evidence of the extent to which the judgments of subject-matter experts agree;

(3) The standard error of each cut score, and how it was established; and

(4) The extent to which the cut scores might be expected to differ if they had been established by a different (though similar) panel of experts.

(g) *Reliability.* Documentation of the degree of consistency in performance across different forms of the test in the absence of any external interventions, including—

(1) The correlation between raw (or scale) scores across alternate forms of the test or, in the case of computerized adaptive tests, across alternate administrations of the test;

(2) The consistency with which examinees are classified into the same NRS educational functioning levels across forms of the test. Information regarding classification consistency should be reported for each NRS educational functioning level that the test is being considered for use in measuring;

(3) The adequacy of the research design leading to the estimates of the reliability of the test, including—

(i) The size of the sample(s);

(ii) The similarity between the sample(s) used in the data collection and the adult education population; and

(iii) The steps taken to ensure the motivation of the examinees; and

(4) Any other information explaining the methodology and procedures used to measure the reliability of the test.

(h) *Construct validity.* Documentation of the appropriateness of a given test for measuring educational gain for the NRS, *i.e.*, documentation that the test measures what it is intended to measure, including—

(1) The extent to which the raw or scale scores and the educational functioning classifications associated with the test correlate (or agree) with scores or classifications associated with other tests designed or intended to assess educational gain in the same adult education population as the NRS;

(2) The extent to which the raw or scale scores are related to other relevant variables, such as teacher evaluation, hours of instruction, or other measures that may be related to test performance;

(3) The adequacy of the research designs associated with these sources of evidence (*see* paragraph (g)(3) of this section); and

(4) Other evidence demonstrating that the test measures gains in educational functioning resulting from adult education and not from other construct-irrelevant variables, such as practice effects.

(i) *Other information.* (1) A description of the manner in which test administration time was determined, and an analysis of the speededness of the test.

(2) Additional guidance on the interpretation of scores resulting from any modifications of the tests for an individual with a disability.

(3) The manual provided to test administrators containing procedures and instructions for test security and administration.

(4) A description of the training or certification required of test administrators and scorers by the test publisher.

(5) A description of retesting (e.g., re-administration of a test because of problems in the original administration such as the test taker becomes ill during the test and cannot finish, there are external interruptions during testing, or there are administration errors) procedures and the analysis upon which the criteria for retesting are based.

(6) Such other evidence as the Secretary may determine is necessary to establish the test's compliance with the criteria and requirements the Secretary uses to determine the suitability of tests as provided in § 462.13.

(j) *Previous tests.* (1) For a test used to measure educational gain in the NRS before the effective date of these regulations that is submitted to the Secretary for review under this part, the test publisher must provide documentation of periodic review of the content and specifications of the test to ensure that the test continues to reflect NRS educational functioning levels.

(2) For a test first published five years or more before the date it is submitted to the Secretary for review under this part, the test publisher must provide documentation of periodic review of the content and specifications of the test to ensure that the test continues to reflect NRS educational functioning levels.

(3) For a test that has not changed in the seven years since the Secretary determined, under § 462.13, that it was suitable for use in the NRS that is again being submitted to the Secretary for review under this part, the test publisher must provide updated data supporting the validity of the test for use in classifying adult learners with respect to the NRS educational functioning levels and the measurement of educational gain as defined in § 462.43 of this part.

(4) If a test has been substantially revised—for example by changing its structure, number of items, content specifications, item types, or sub-tests—from the most recent edition reviewed by the Secretary under this part, the test publisher must provide an analysis of the revisions, including the reasons for the revisions, the implications of the revisions for the comparability of scores on the current test to scores on the previous test, and results from validity, reliability, and equating or standard-setting studies undertaken subsequent to the revisions.

(Authority: 20 U.S.C. 9212)

§ 462.12 What procedures does the Secretary use to review the suitability of tests?

(a) *Review.* (1) When the Secretary receives a complete application from a test publisher, the Secretary selects experts in the field of educational testing and assessment who possess appropriate advanced degrees and experience in test development or psychometric research, or both, to advise the Secretary on the extent to which a test meets the criteria and requirements in § 462.13.

(2) The Secretary reviews and determines the suitability of a test only if an application—

(i) Is submitted by a test publisher;

(ii) Meets the deadline established by the Secretary;

(iii) Includes a test that—

(A) Has two or more secure, parallel, equated forms of the same test—either traditional paper and pencil or computer-administered instruments—for which forms are constructed prior to administration to examinees; or

(B) Is an adaptive test that uses computerized algorithms for selecting and administering items in real time; however, for such an instrument, the size of the item pool and the method of item selection must ensure negligible overlap in items across pre- and post-testing;

(iv) Includes a test that samples one or more of the major content domains of the NRS educational functioning levels of ABE, ESL, or ASE with sufficient numbers of questions to represent adequately the domain or domains; and

(v) Includes the information prescribed by the Secretary, including the information in § 462.11 of this part.

(b) *Secretary's determination.* (1) The Secretary determines whether a test meets the criteria and requirements in § 462.13 after taking into account the advice of the experts described in paragraph (a)(1) of this section.

(2) For tests that contain multiple sub-tests measuring content domains other than those of the NRS educational functioning levels, the Secretary determines the suitability of only those sub-tests covering the domains of the NRS educational functioning levels.

(c) *Suitable tests.* If the Secretary determines that a test satisfies the criteria and requirements in § 462.13 and, therefore, is suitable for use in the NRS, the Secretary—

(1) Notifies the test publisher of the Secretary's decision; and

(2) Annually publishes in the **Federal Register** and posts on the Internet at *http://www.nrsweb.org* a list of the names of tests and the educational functioning levels the tests are suitable to measure in the NRS. A copy of the list is also available from the U.S. Department of Education, Office of Vocational and Adult Education, Division of Adult Education and Literacy, 400 Maryland Avenue, SW., room 11159, Potomac Center Plaza, Washington, DC 20202–7240.

(d) *Unsuitable tests.* (1) If the Secretary determines that a test does not satisfy the criteria and requirements in § 462.13 and, therefore, is not suitable for use in the NRS, the Secretary notifies the test publisher of the Secretary's decision and of the reasons why the test does not meet those criteria and requirements.

(2) Within 30 days after the Secretary notifies a test publisher that its test is not suitable for use in the NRS, the test publisher may request that the Secretary reconsider the Secretary's decision. This request must be accompanied by—

(i) An analysis of why the information and documentation submitted meet the criteria and requirements in § 462.13, notwithstanding the Secretary's earlier decision to the contrary; and

(ii) Any additional documentation and information that address the Secretary's reasons for determining that the test was unsuitable.

(3) The Secretary reviews the additional information submitted by the test publisher and makes a final determination regarding the suitability of the test for use in the NRS.

(i) If the Secretary's decision is unchanged and the test remains unsuitable for use in the NRS, the Secretary notifies the test publisher, and this action concludes the review process.

(ii) If the Secretary's decision changes and the test is determined to be suitable for use in the NRS, the Secretary follows the procedures in paragraph (c) of this section.

(e) *Revocation.* (1) The Secretary's determination regarding the suitability of a test may be revoked if the Secretary determines that—

(i) The information the publisher submitted as a basis for the Secretary's review of the test was inaccurate; or

(ii) A test has been substantially revised—for example, by changing its structure, number of items, content specifications, item types, or sub-tests.

(2) The Secretary notifies the test publisher of the—

(i) Secretary's decision to revoke the determination that the test is suitable for use in the NRS; and

(ii) Reasons for the Secretary's revocation.

(3) Within 30 days after the Secretary notifies a test publisher of the decision to revoke a determination that a test is suitable for use in the NRS, the test publisher may request that the Secretary reconsider the decision. This request must be accompanied by documentation and information that address the Secretary's reasons for revoking the determination that the test is suitable for use in the NRS.

(4) The Secretary reviews the information submitted by the test publisher and makes a final determination regarding the suitability of the test for use in the NRS.

(5) If the Secretary revokes the determination regarding the suitability of a test, the Secretary publishes in the **Federal Register** and posts on the Internet at *http://www.nrsweb.org* a notice of that revocation along with the date by which States and local eligible providers must stop using the revoked test. A copy of the notice of revocation is also available from the U.S. Department of Education, Office of Vocational and Adult Education, Division of Adult Education and Literacy, 400 Maryland Avenue, SW., room 11159, Potomac Center Plaza, Washington, DC 20202–7240.

(Authority: 20 U.S.C. 9212)

§ 462.13 What criteria and requirements does the Secretary use for determining the suitability of tests?

In order for the Secretary to consider a test suitable for use in the NRS, the test or the test publisher, if applicable, must meet the following criteria and requirements:

(a) The test must measure the NRS educational functioning levels of members of the adult education population.

(b) The test must sample one or more of the major content domains of the NRS educational functioning levels of ABE, ESL, or ASE with sufficient numbers of questions to adequately represent the domain or domains.

(c)(1) The test must meet all applicable and feasible standards for test construction and validity provided in the 1999 edition of the *Standards for Educational and Psychological Testing,* prepared by the Joint Committee on Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Psychological Association, Inc., 750 First Street, NE., Washington, DC 20002. You may inspect a copy at the Department of Education, room 11159, 550 12th Street, SW., Washington, DC 20202 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.*

(2) If requested by the Secretary, a test publisher must explain why it believes that certain standards in the 1999 edition of the *Standards for Educational and Psychological Testing* were not applicable or were not feasible to meet.

(d) The test must contain the publisher's guidelines for retesting, including time between test-taking, which are accompanied by appropriate justification.

(e) The test must—

(1) Have two or more secure, parallel, equated forms of the same test—either traditional paper and pencil or computer administered instruments—for which forms are constructed prior to administration to examinees; or

(2) Be an adaptive test that uses computerized algorithms for selecting and administering items in real time; however, for such an instrument, the size of the item pool and the method of item selection must ensure negligible overlap in items across pre- and post-testing. Scores associated with these alternate administrations must be equivalent in meaning.

(f) For a test that has been modified for individuals with disabilities, the test publisher must—

(1) Provide documentation that it followed the guidelines provided in the Testing Individuals With Disabilities section of the 1999 edition of the *Standards for Educational and Psychological Testing;*

(2) Provide documentation of the appropriateness and feasibility of the modifications relevant to test performance; and

(3)(i) Recommend educational functioning levels based on the information obtained from adult education students who participated in the pilot or field test and who have the disability for which the test has been modified; and

(ii) Provide documentation of the adequacy of the procedures used to translate the performance of adult education students with the disability for whom the test has been modified to an estimate of the examinees' standing with respect to the NRS educational functioning levels.

(Authority: 20 U.S.C. 9212)

§ 462.14 How often and under what circumstances must a test be reviewed by the Secretary?

(a) The Secretary's determination that a test is suitable for use in the NRS is in effect for a period of seven years from the date of the Secretary's written notification to the test publisher, unless otherwise indicated by the Secretary. After that time, if the test publisher wants the test to be used in the NRS, the test must be reviewed again by the Secretary so that the Secretary can determine whether the test continues to be suitable for use in the NRS.

(b) If a test that the Secretary has determined is suitable for use in the NRS is substantially revised—for example, by changing its structure, number of items, content specifications, item types, or sub-tests—and the test publisher wants the test to continue to be used in the NRS, the test publisher must submit, as provided in § 462.11(j)(4), the substantially revised test or version of the test to the Secretary for review so that the Secretary can determine whether the test continues to be suitable for use in the NRS.

(Authority: 20 U.S.C. 9212)

Subpart C—[Reserved]

Subpart D—What Requirements Must States and Local Eligible Providers Follow When Measuring Educational Gain?

§ 462.40 Must a State have an assessment policy?

(a) A State must have a written assessment policy that its local eligible providers must follow in measuring educational gain and reporting data in the NRS.

(b) A State must submit its assessment policy to the Secretary for review and approval at the time it submits its annual statistical report for the NRS.

(c) The State's assessment policy must—

(1) Include a statement requiring that local eligible providers measure the educational gain of all students who receive 12 hours or more of instruction in the State's adult education program with a test that the Secretary has determined is suitable for use in the NRS;

(2) Identify the pre- and post-tests that the State requires local eligible providers to use to measure the educational gain of ABE, ESL, and ASE students;

(3)(i) Indicate when, in calendar days or instructional hours, local eligible providers must administer pre- and post-tests to students; and

(ii) Ensure that the time for administering the post-test is long enough after the pre-test to allow the test to measure educational gains according to the test publisher's guidelines;

(4) Specify the score ranges tied to educational functioning levels for placement and for reporting gains for accountability;

(5) Identify the skill areas the State intends to require local eligible providers to assess in order to measure educational gain;

(6) Include the guidance the State provides to local eligible providers on testing and placement of an individual with a disability or an individual who is unable to be tested because of a disability;

(7) Describe the training requirements that staff must meet in order to be qualified to administer and score each test selected by the State to measure the educational gains of students;

(8) Identify the alternate form or forms of each test that local eligible providers must use for post-testing;

(9) Indicate whether local eligible providers must use a locator test for guidance on identifying the appropriate pre-test;

(10) Describe the State's policy for the initial placement of a student at each NRS educational functioning level using test scores;

(11) Describe the State's policy for using the post-test for measuring educational gain and for advancing students across educational functioning levels;

(12) Describe the pre-service and in-service staff training that the State or local eligible providers will provide, including training—

(i) For staff who either administer or score each of the tests used to measure educational gain;

(ii) For teachers and other local staff involved in gathering, analyzing, compiling, and reporting data for the NRS; and

(iii) That includes the following topics:

(A) NRS policy, accountability policies, and the data collection process.

(B) Definitions of measures.

(C) Conducting assessments; and

(13) Identify the State or local agency responsible for providing pre- and in-service training.

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(Authority: 20 U.S.C. 9212)

§ 462.41 How must tests be administered in order to accurately measure educational gain?

(a) *General.* A local eligible provider must measure the educational gains of students using only tests that the Secretary has determined are suitable for use in the NRS and that the State has identified in its assessment policy.

(b) *Pre-test.* A local eligible provider must—

(1) Administer a pre-test to measure a student's educational functioning level at intake, or as soon as possible thereafter;

(2) Administer the pre-test to students at a uniform time, according to its State's assessment policy; and

(3) Administer pre-tests to students in the skill areas identified in its State's assessment policy.

(c) *Post-test.* A local eligible provider must—

(1) Administer a post-test to measure a student's educational functioning level after a set time period or number of instructional hours;

(2) Administer the post-test to students at a uniform time, according to its State's assessment policy;

(3)(i) Administer post-tests with a secure, parallel, equated form of the same test—either traditional paper and pencil or computer-administered instruments—for which forms are constructed prior to administration to examinees to pre-test and determine the initial placement of students; or

(ii) Administer post-tests with an adaptive test that uses computerized algorithms for selecting and administering items in real time; however, for such an instrument, the size of the item pool and the method of item selection must ensure negligible overlap in items across pre- and post-testing; and

(4) Administer post-tests to students in the same skill areas as the pre-test.

(d) *Other requirements.* (1) A local eligible provider must administer a test using only staff who have been trained to administer the test.

(2) A local eligible provider may use the results of a test in the NRS only if the test was administered in a manner that is consistent with the State's assessment policy and the test publisher's guidelines.

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(Authority: 20 U.S.C. 9212)

§ 462.42 How are tests used to place students at an NRS educational functioning level?

(a) A local eligible provider must use the results of the pre-test described in § 462.41(b) to initially place students at the appropriate NRS educational functioning level.

(b) A local eligible provider must use the results of the post-test described in § 462.41(c)—

(1) To determine whether students have completed one or more educational functioning levels or are progressing within the same level; and

(2) To place students at the appropriate NRS educational functioning level.

(c)(1) States and local eligible providers are not required to use all of the skill areas described in the NRS educational functioning levels to place students.

(2) States and local eligible providers must test and report on the skill areas most relevant to the students' needs and to the programs' curriculum.

(d)(1) If a State's assessment policy requires a local eligible provider to test a student in multiple skill areas and the student will receive instruction in all of the skill areas, the local eligible provider must place the student in an educational functioning level that is equivalent to the student's lowest test score for any of the skill areas tested under § 462.41(b) and (c).

(2) If a State's assessment policy requires a local eligible provider to test a student in multiple skill areas, but the student will receive instruction in fewer than all of the skill areas, the local eligible provider must place the student in an educational functioning level that is equivalent to the student's lowest test score for any of the skill areas—

(i) Tested under § 462.41(b) and (c); and

(ii) In which the student will receive instruction.

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(Authority: 20 U.S.C. 9212)

§ 462.43 How is educational gain measured?

(a)(1) Educational gain is measured by comparing the student's initial educational functioning level, as measured by the pre-test described in § 462.41(b), with the student's educational functioning level as measured by the post-test described in § 462.41(c).

Example: A State's assessment policy requires its local eligible providers to test students in reading and numeracy. The student scores lower in reading than in numeracy. As described in § 462.42(d)(1), the local eligible provider would use the student's reading score to place the student in an educational functioning level. To measure educational gain, the local eligible provider would compare the reading score on the pre-test with the reading score on the post-test.

(2) A student is considered to have made an educational gain when the student's post-test indicates that the student has completed one or more educational functioning levels above the level in which the student was placed by the pre-test.

(b) If a student is not post-tested, then no educational gain can be measured for that student and the local eligible provider must report the student in the same educational functioning level as initially placed for NRS reporting purposes.

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(Authority: 20 U.S.C. 9212)

§ 462.44 Which educational functioning levels must States and local eligible providers use to measure and report educational gain in the NRS?

States and local eligible providers must use the NRS educational functioning levels in the following functioning level table:

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Table to §462.44—Functioning Level Table

EDUCATIONAL FUNCTIONING LEVEL DESCRIPTORS—ADULT BASIC EDUCATION LEVELS			
Literacy Level	Basic Reading and Writing	Numeracy Skills	Functional and Workplace Skills
Beginning ABE Literacy Grade level 0–1.9	Individual has no or minimal reading and writing skills. May have little or no comprehension of how print corresponds to spoken language and may have difficulty using a writing instrument. At the upper range of this level, individual can recognize, read, and write letters and numbers but has a limited understanding of connected prose and may need frequent re-reading. Can write a limited number of basic sight words and familiar words and phrases; may also be able to write simple sentences or phrases, including very simple messages. Can write basic personal information. Narrative writing is disorganized and unclear, inconsistently uses simple punctuation (e.g., periods, commas, question marks), and contains frequent errors in spelling.	Individual has little or no recognition of numbers or simple counting skills or may have only minimal skills, such as the ability to add or subtract single digit numbers.	Individual has little or no ability to read basic signs or maps and can provide limited personal information on simple forms. The individual can handle routine entry level jobs that require little or no basic written communication or computational skills and no knowledge of computers or other technology.
Beginning Basic Education Grade level 2–3.9	Individual can read simple material on familiar subjects and comprehend simple and compound sentences in single or linked paragraphs containing a familiar vocabulary; can write simple notes and messages on familiar situations but lacks clarity and focus. Sentence structure lacks variety, but individual shows some control of basic grammar (e.g., present and past tense) and consistent use of punctuation (e.g., periods, capitalization).	Individual can count, add, and subtract three digit numbers, can perform multiplication through 12, can identify simple fractions, and perform other simple arithmetic operations.	Individual is able to read simple directions, signs, and maps, fill out simple forms requiring basic personal information, write phone messages, and make simple changes. There is minimal knowledge of and experience with using computers and related technology. The individual can handle basic entry level jobs that require minimal literacy skills; can recognize very short, explicit, pictorial texts (e.g., understands logos related to worker safety before using a piece of machinery); and can read want ads and complete simple job applications.
Low Intermediate Basic Education Grade level 4–5.9	Individual can read text on familiar subjects that have a simple and clear underlying structure (e.g., clear main idea, chronological order); can use context to determine meaning; can interpret actions required in specific written directions; can write simple paragraphs with a main idea and supporting details on familiar topics (e.g., daily activities, personal issues) by recombining learned vocabulary and structures; and can self and peer edit for spelling and punctuation errors.	Individual can perform with high accuracy all four basic math operations using whole numbers up to three digits and can identify and use all basic mathematical symbols.	Individual is able to handle basic reading, writing, and computational tasks related to life roles, such as completing medical forms, order forms, or job applications; and can read simple charts, graphs, labels, and payroll stubs and simple authentic material if familiar with the topic. The individual can use simple computer programs and perform a sequence of routine tasks given direction using technology (e.g., fax machine, computer operation). The individual can qualify for entry level jobs that require following basic written instructions and diagrams with assistance, such as oral clarification; can write a short report or message to fellow workers; and can read simple dials and scales and take routine measurements.

Table to §462.44—Functioning Level Table (Continued)

EDUCATIONAL FUNCTIONING LEVEL DESCRIPTORS—ADULT BASIC EDUCATION LEVELS			
Literacy Level	Basic Reading and Writing	Numeracy Skills	Functional and Workplace Skills
High Intermediate Basic Education Grade level 6–8.9	Individual is able to read simple descriptions and narratives on familiar subjects or from which new vocabulary can be determined by context and can make some minimal inferences about familiar texts and compare and contrast information from such texts but not consistently. The individual can write simple narrative descriptions and short essays on familiar topics and has consistent use of basic punctuation but makes grammatical errors with complex structures.	Individual can perform all four basic math operations with whole numbers and fractions; can determine correct math operations for solving narrative math problems and can convert fractions to decimals and decimals to fractions; and can perform basic operations on fractions.	Individual is able to handle basic life skills tasks such as graphs, charts, and labels and can follow multistep diagrams; can read authentic materials on familiar topics, such as simple employee handbooks and payroll stubs; can complete forms such as a job application and reconcile a bank statement. Can handle jobs that involve following simple written instructions and diagrams; can read procedural texts, where the information is supported by diagrams, to remedy a problem, such as locating a problem with a machine or carrying out repairs using a repair manual. The individual can learn or work with most basic computer software, such as using a word processor to produce own texts, and can follow simple instructions for using technology.
EDUCATIONAL FUNCTIONING LEVEL DESCRIPTORS—ADULT SECONDARY EDUCATION LEVELS			
Literacy Level	Basic Reading and Writing	Numeracy Skills	Functional and Workplace Skills
Low Adult Secondary Education *Grade level 9–10.9*	Individual can comprehend expository writing and identify spelling, punctuation, and grammatical errors; can comprehend a variety of materials such as periodicals and nontechnical journals on common topics; can comprehend library reference materials and compose multiparagraph essays; can listen to oral instructions and write an accurate synthesis of them; and can identify the main idea in reading selections and use a variety of context issues to determine meaning. Writing is organized and cohesive with few mechanical errors; can write using a complex sentence structure; and can write personal notes and letters that accurately reflect thoughts.	Individual can perform all basic math functions with whole numbers, decimals, and fractions; can interpret and solve simple algebraic equations, tables, and graphs and can develop own tables and graphs; and can use math in business transactions.	Individual is able or can learn to follow simple multistep directions and read common legal forms and manuals; can integrate information from texts, charts, and graphs; can create and use tables and graphs; can complete forms and applications and complete resumes; can perform jobs that require interpreting information from various sources and writing or explaining tasks to other workers; is proficient using computers and can use most common computer applications; can understand the impact of using different technologies; and can interpret the appropriate use of new software and technology.
High Adult Secondary Education *Grade level 11–12*	Individual can comprehend, explain, and analyze information from a variety of literacy works, including primary source materials and professional journals, and can use context cues and higher order processes to interpret meaning of written material. Writing is cohesive with clearly expressed ideas supported by relevant detail, and individual can use varied and complex sentence structures with few mechanical errors.	Individual can make mathematical estimates of time and space and can apply principles of geometry to measure angles, lines, and surfaces and can also apply trigonometric functions.	Individual is able to read technical information and complex manuals; can comprehend some college level books and apprenticeship manuals; can function in most job situations involving higher order thinking; can read text and explain a procedure about a complex and unfamiliar work procedure, such as operating a complex piece of machinery; can evaluate new work situations and processes; and can work productively and collaboratively in groups and serve as facilitator and reporter of group work. The individual is able to use common software and learn new software applications; can define the purpose of new technology and software and select appropriate technology; can adapt use of software or technology to new situations; and can instruct others, in written or oral form, on software and technology use.

Table to §462.44—Functioning Level Table (Continued)

EDUCATIONAL FUNCTIONING LEVEL DESCRIPTORS—ENGLISH AS A SECOND LANGUAGE LEVELS			
Literacy Level	Listening and Speaking	Basic Reading and Writing	Functional and Workplace Skills
Beginning ESL Literacy SPL 0–1	Individual cannot speak or understand English, or understands only isolated words or phrases.	Individual has no or minimal reading or writing skills in any language. May have little or no comprehension of how print corresponds to spoken language and may have difficulty using a writing instrument.	Individual functions minimally or not at all in English and can communicate only through gestures or a few isolated words, such as name and other personal information; may recognize only common signs or symbols (e.g., stop sign, product logos); can handle only very routine entry-level jobs that do not require oral or written communication in English. There is no knowledge or use of computers or technology.
Low Beginning ESL SPL 2	Individual can understand basic greetings, simple phrases and commands. Can understand simple questions related to personal information, spoken slowly and with repetition. Understands a limited number of words related to immediate needs and can respond with simple learned phrases to some common questions related to routine survival situations. Speaks slowly and with difficulty. Demonstrates little or no control over grammar.	Individual can read numbers and letters and some common sight words. May be able to sound out simple words. Can read and write some familiar words and phrases, but has a limited understanding of connected prose in English. Can write basic personal information (e.g., name, address, telephone number) and can complete simple forms that elicit this information.	Individual functions with difficulty in social situations and in situations related to immediate needs. Can provide limited personal information on simple forms, and can read very simple common forms of print found in the home and environment, such as product names. Can handle routine entry level jobs that require very simple written or oral English communication and in which job tasks can be demonstrated. May have limited knowledge and experience with computers.
High Beginning ESL SPL 3	Individual can understand common words, simple phrases, and sentences containing familiar vocabulary, spoken slowly with some repetition. Individual can respond to simple questions about personal everyday activities, and can express immediate needs, using simple learned phrases or short sentences. Shows limited control of grammar.	Individual can read most sight words, and many other common words. Can read familiar phrases and simple sentences but has a limited understanding of connected prose and may need frequent re-reading. Individual can write some simple sentences with limited vocabulary. Meaning may be unclear. Writing shows very little control of basic grammar, capitalization and punctuation and has many spelling errors.	Individual can function in some situations related to immediate needs and in familiar social situations. Can provide basic personal information on simple forms and recognizes simple common forms of print found in the home, workplace and community. Can handle routine entry level jobs requiring basic written or oral English communication and in which job tasks can be demonstrated. May have limited knowledge or experience using computers.

Table to §462.44—Functioning Level Table (Continued)

EDUCATIONAL FUNCTIONING LEVEL DESCRIPTORS—ENGLISH AS A SECOND LANGUAGE LEVELS			
Literacy Level	Listening and Speaking	Basic Reading and Writing	Functional and Workplace Skills
Low Intermediate ESL SPL 4	Individual can understand simple learned phrases and limited new phrases containing familiar vocabulary spoken slowly with frequent repetition; can ask and respond to questions using such phrases; can express basic survival needs and participate in some routine social conversations, although with some difficulty; and has some control of basic grammar.	Individual can read simple material on familiar subjects and comprehend simple and compound sentences in single or linked paragraphs containing a familiar vocabulary; can write simple notes and messages on familiar situations but lacks clarity and focus. Sentence structure lacks variety but shows some control of basic grammar (e.g., present and past tense) and consistent use of punctuation (e.g., periods, capitalization).	Individual can interpret simple directions and schedules, signs, and maps; can fill out simple forms but needs support on some documents that are not simplified; and can handle routine entry level jobs that involve some written or oral English communication but in which job tasks can be demonstrated. Individual can use simple computer programs and can perform a sequence of routine tasks given directions using technology (e.g., fax machine, computer).
High Intermediate ESL SPL 5	Individual can understand learned phrases and short new phrases containing familiar vocabulary spoken slowly and with some repetition; can communicate basic survival needs with some help; can participate in conversation in limited social situations and use new phrases with hesitation; and relies on description and concrete terms. There is inconsistent control of more complex grammar.	Individual can read text on familiar subjects that have a simple and clear underlying structure (e.g., clear main idea, chronological order); can use context to determine meaning; can interpret actions required in specific written directions; can write simple paragraphs with main idea and supporting details on familiar topics (e.g., daily activities, personal issues) by recombining learned vocabulary and structures; and can self and peer edit for spelling and punctuation errors.	Individual can meet basic survival and social needs, can follow some simple oral and written instruction, and has some ability to communicate on the telephone on familiar subjects; can write messages and notes related to basic needs; can complete basic medical forms and job applications; and can handle jobs that involve basic oral instructions and written communication in tasks that can be clarified orally. Individual can work with or learn basic computer software, such as word processing, and can follow simple instructions for using technology.
Advanced ESL SPL 6	Individual can understand and communicate in a variety of contexts related to daily life and work. Can understand and participate in conversation on a variety of everyday subjects, including some unfamiliar vocabulary, but may need repetition or rewording. Can clarify own or others' meaning by rewording. Can understand the main points of simple discussions and informational communication in familiar contexts. Shows some ability to go beyond learned patterns and construct new sentences. Shows control of basic grammar but has difficulty using more complex structures. Has some basic fluency of speech.	Individual can read moderately complex text related to life roles and descriptions and narratives from authentic materials on familiar subjects. Uses context and word analysis skills to understand vocabulary, and uses multiple strategies to understand unfamiliar texts. Can make inferences, predictions, and compare and contrast information in familiar texts. Individual can write multi-paragraph text (e.g., organizes and develops ideas with clear introduction, body, and conclusion), using some complex grammar and a variety of sentence structures. Makes some grammar and spelling errors. Uses a range of vocabulary.	Individual can function independently to meet most survival needs and to use English in routine social and work situations. Can communicate on the telephone on familiar subjects. Understands radio and television on familiar topics. Can interpret routine charts, tables and graphs and can complete forms and handle work demands that require non-technical oral and written instructions and routine interaction with the public. Individual can use common software, learn new basic applications, and select the correct basic technology in familiar situations.

(Approved by the Office of Management and Budget under control number 1830–0027)

(Authority: 20 U.S.C. 9212)

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January 14, 2008

Part III

Department of Transportation

Federal Transit Administration

49 CFR Part 604
Charter Service; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

[Docket No. FTA–2005–22657]

RIN 2132–AA85

Charter Service

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends regulations which govern the provision of charter service by recipients of Federal funds from the Federal Transit Administration (FTA). Pursuant to the direction contained in the Joint Explanatory Statement of the Committee of Conference, for section 3023(d), ''Condition on Charter Bus Transportation Service'' of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) of 2005, FTA established a committee to develop, through negotiated rulemaking procedures, recommendations for improving the regulation regarding unauthorized competition from recipients of Federal financial assistance. This final rule clarifies the existing requirements, sets out a new definition of ''charter service,'' allows for electronic registration of private charter providers, which replaces the old ''willing and able'' process, includes a new provision allowing private charter operators to request a cease and desist order, and establishes more detailed complaint, hearing, and appeal procedures.

DATES: *Effective Date:* April 30, 2008.

ADDRESSES: A copy of this rule and comments and material received from the public, as well as any documents indicated in the preamble as being available in the docket, are part of docket FTA–2005–22657 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may retrieve the rule and comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.* Enter docket number 22657 in the search field. The FDMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

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FOR FURTHER INFORMATION CONTACT: Crystal Frederick, Ombudsman for Charter Services, Federal Transit Administration, 1200 New Jersey Ave., SE., Room E54–410, Washington, DC 20590, (202) 366–4063 or *ombudsman.charterservice@dot.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory History

The Federal Transit Administration was established by the Urban Mass Transportation Act of 1964 (UMT Act, the Act).[1] The Act provided funds for ''mass transportation'' purposes, defined as: ''transportation by bus or rail or other conveyance, either publicly or privately owned, serving the general public (but not including school buses or charter or sightseeing service) and moving over prescribed routes.''[2] This provision illustrates the balance Congress sought to strike between the public and private sectors of the economy. Congress acted to provide Federal funding for the continued existence of urban fixed route providers by enacting a capital program to acquire private transit companies and establish new public transportation agencies. The charter services provided by private companies were still profitable; accordingly, Congress excluded charter service from the definition of ''mass transportation.''

The Federal Aid Highway Act of 1973 placed an additional restriction on the use of federally funded buses for charter service. The 1973 Act prohibited Federal assistance unless the applicant had entered into an agreement with the Secretary of Transportation that it would not engage in charter bus operations in competition with private bus operators outside of the area in which the applicant provided regularly scheduled mass transportation services.

In 1974, however, Congress eased the 1973 restriction by allowing an applicant to provide charter services outside the urban area where it provided regularly scheduled mass transportation if it entered into an agreement with the Secretary of Transportation that provided ''fair and equitable arrangements'' to ensure that federally assisted operators did not compete with private operators of intercity charter bus service where such private operators were willing and able to provide the service.[3] In other words, Federal financial assistance should not enable applicants to foreclose private operators from the intercity charter bus industry where there are private charter operators willing and able to provide the service.

2. Regulatory History

FTA proposed its first regulation regarding charter service on June 13, 1975.[4] This proposal set out policies and procedures governing the provision of charter bus services and the reporting of charter bus revenues and expenses under the UMT Act. The proposed regulations required public operators to take into account both the direct and indirect costs of operating charter service, without regard to the receipt of Federal financial assistance, when developing their charter rates. The proposed regulations also compelled public operators to generate revenues equal to or greater than the cost of providing the charter bus service.[5] FTA finalized this regulation on April 1, 1976.[6]

Public transportation agencies complained that this final regulation created an undue administrative burden on them. Private charter companies complained that publicly funded operators, using federally financed equipment, were forcing them out of business.

In response, FTA issued an Advance Notice of Proposed Rulemaking (ANPRM) in 1976, which sought to clarify the duties of recipients who engaged in charter bus operations outside their urban area and provide more reliable protection to private operators in the intercity charter bus industry while reducing paperwork burdens on recipients.[7]

Another ANPRM was published in 1982, which sought to take a fresh look at the charter regulations.[8] The ANPRM contained four proposals for safeguarding the use of transit equipment and protecting the health of the private intercity charter industry.

[1] Pub. L. No. 88–365.

[2] UMT Act, Section 2(b).

[3] Pub. L. 93087, Section 164(a), August 13, 1973.

[4] ''Charter and School Bus Operations,'' 40 FR 25304, June 13, 1975.

[5] Id. at 25305.

[6] ''Charter and School Bus Operations,'' 41 FR 14123, April 1, 1976.

[7] 41 FR 56680, December 29, 1976.

[8] 41 FR 5394, January 19, 1981.

After reviewing the comments received, FTA determined that none of the four proposals adequately addressed the problem. So, in 1986, FTA issued a NPRM with a brand new proposal. This proposal would prohibit a recipient from performing any charter bus operations to the extent that there was a private charter operator willing and able to provide such charter service in the area in which the recipient desired to provide charter bus operations. This proposal also included exceptions that allowed a public transportation agency to provide charter service in the event there were no willing and able private charter operators, if private charter operators did not have capacity, if private charter operators were unable to provide accessible equipment, or for non-urbanized areas, or if the private charter operator providing the service would create a hardship for the customer.[9] This proposal was finalized in 1987.[10]

The 1976 regulation and the 1987 regulation are fundamentally different in their approaches and provisions. The 1976 regulation distinguished between charter service that a recipient provided in its service area (intracity service) and charter service a recipient provided outside its service area (intercity service). The 1976 regulation made this distinction because of the new provisions of the UMT Act, which restricted only a recipient's intercity charter service. The rule required recipients to certify all costs that were attributable to the recipient's charter bus operations and maintain records that justified their costs.

In contrast, the 1987 rule did not provide different requirements for intercity and intracity service. The 1987 rule eliminated this distinction because the UMT Act definition of ''mass transportation'' excluded all charter operations, thereby requiring protection for all private charter operators from recipients, not just those providing intercity operations or those that earned in excess of a certain amount. Instead, the 1987 rule focused on prohibiting all charter service by a recipient if there was a willing and able private charter operator who could perform the service.

In 1988, Congress directed FTA to amend the charter service regulation to permit non-profit social service agencies with a clear need for affordable and/or accessible equipment to seek bids for charter service from publicly funded operators. On December 30, 1988, FTA amended the charter service regulations to provide for three new exceptions.[11] The first exception allowed recipients to provide direct charter service to non-profit social service agencies. The second exception, limited to recipients in non-urbanized areas, allowed recipients to provide direct charter service to non-profit social service organizations if more than fifty percent of the passengers were elderly. The third exception allowed recipients to provide direct charter services where there was a formal agreement between the recipient and all private operators it had determined to be willing and able through its annual public charter notice. The addition of these exceptions brought the total number of exceptions contained in the rule to eight.[12] The rule has remained essentially unchanged since this amendment in 1988.

3. Demonstration Project and GAO Report

Since lingering concerns remained about the charter service regulation and FTA's enforcement of the rule, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) directed FTA to issue regulations implementing a charter service demonstration program in not more than four states.[13] A report evaluating the effectiveness of the demonstration program was to be submitted in three years. The conference report accompanying ISTEA explained that the demonstration program was directed in response to concerns expressed by local transit operators regarding the existing charter service regulation. Many public operators were concerned that certain groups were not being served under the existing regulation, that they were not able to provide service to local government entities that provided support to the local agency, and that they were not permitted to provide service to support local economic development activities. The demonstration program was to be designed to allow public operators in several locations greater flexibility to meet local charter needs without creating undue competition for privately owned charter operators. Congress required FTA to collect data on the impact of the change.

In September 1997, FTA submitted its report to Congress regarding the demonstration program.[14] The report concluded that there was no need for FTA to substantially revise its charter service regulation. The demonstration did not support public operators' claims of unmet needs for the groups for which the demonstration was primarily intended: government, civic, charitable and other community activities. The charter service provided during the demonstration did not serve a significant number of these groups or significantly increase the level of service to these groups.

Congress also directed the Government Accounting Office (GAO) to analyze FTA's charter service regulations. GAO conducted a nationwide survey of public transportation operators, private charter operators, and customers.[15] GAO's report showed that local charter regulation differed across localities. GAO found that most public operators stated that the FTA regulation was too strict, but that they had not extensively used the available exceptions to provide charter service. Their reasons for not using the exceptions ranged from being unfamiliar with the exceptions to the exceptions being too cumbersome for the relatively small amount of charter service that they were interested in providing.[16] When asked what they would change about the regulation, suggestions varied depending on whether the public transportation agency was in an urban or rural area. Urban public transportation providers would change the rule to allow them to provide charter service to local government officials and non-profit community organizations. Rural operators would change the rule to allow direct charter services to nonprofit and community organizations, but also requested clarification of the rule.[17]

GAO found that most private charter operators were satisfied with FTA's charter service regulations. Some private charter operators did, however, express concern about the complaint process. Specifically, some private charter operators stated that the burden of proof fell on them when a public operator violated the regulation, the burden of proof fell on them and that the complaint process was lengthy and expensive. Further, some were skeptical

[9] 51 FR 7891, March 6, 1986.

[10] 52 FR 11916, April 13, 1987.

[11] H. Report 110–498, p. H 122787 as printed in the Congressional Record, December 21, 1987.

[12] ''Charter Service; Amendment,'' 53 FR 53348, December 30, 1988.

[13] Section 3040, ''Intermodal Surface Transportation Efficiency Act of 1991,'' Pub. L. No. 102–240, December 19, 1991.

[14] ''Evaluation of the Charter Bus Demonstration,'' Federal Transit Administration, Department of Transportation, September 1997.

[15] ''Charter Bus Service: Local Factors Determine the Effectiveness of Federal Regulation, GAO Report to Congressional Committees,'' GAO/RCED–93–162, September 7, 1993.

[16] Id. at 3.

[17] Id. at 4.

that recipients were accurately calculating their fully allocated costs (i.e., all labor, capital, and material costs) of providing charter service. As a result some private charter operators believed that public transportation agencies were charging lower rates than they should.[18]

The GAO also interviewed customers of charter service to find out their concerns with FTA's charter service regulation. GAO found two user groups that were dissatisfied with the regulation: those who needed accessible transportation and those who needed a large number of vehicles to serve local conventions and economic development activities.[19]

The GAO report concluded that its data did not provide compelling evidence that there were serious widespread needs for charter service that could not be met under the current regulation. The data showed that the current exceptions to the regulation, such as contracting with private providers, were not widely used. GAO believed that many public operators, particularly those in rural areas, were unfamiliar with the process for obtaining exceptions.[20]

B. SAFETEA–LU

Congress next addressed concerns regarding FTA's charter service regulation in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), which was enacted on August 10, 2005. The statute amended the statutory provision regarding charter service found at 49 U.S.C. 5323(d). Specifically, with respect to remedies, the SAFETEA–LU amendment provides that, ''in addition to any remedy specified in the agreement, the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate if the Secretary finds a pattern of violations of the agreement.'' Previously, the statute used permissive language, ''may,'' rather than mandatory language, ''shall,'' with respect to withholding funds. Further, the previous statutory language did not state that the Secretary could determine an appropriate amount to withhold when the Secretary found a pattern of violations. Rather, if a pattern of violations was found, the Secretary only had the option to bar the recipient from receiving all of its Federal funds.

Additionally, the Joint Explanatory Statement of the Committee of Conference, for section 3023(d), ''Conditions on Charter Bus Transportation Service'' of SAFETEA–LU, stated ''the conferees are aware that both public transportation providers and private charter bus providers have expressed strong concerns about the 1987 FTA rule enforcing section 5323(d) regarding charter bus service. The conferees direct the FTA to initiate a negotiated rulemaking seeking public comment on the regulations implementing section 5323(d).'' The report also directed FTA to consider the following issues during the negotiated rulemaking:

1. Are there potential limited conditions under which public transit agencies can provide community-based charter services directly to local governments and private non-profit agencies that would not otherwise be served in a cost-effective manner by private operators?
2. How can the administration and enforcement of charter bus provisions be better communicated to the public, including the use of Internet technology?
3. How can enforcement of violations of the charter bus regulations be improved?
4. How can the charter complaint and administrative appeals process be improved?

C. Federal Advisory Committee

In response to the direction contained in the Conference Committee Report, FTA established a federal advisory committee to develop, through negotiated rulemaking procedures, recommendations for improving the regulation regarding charter bus services. FTA established a Federal Advisory Committee on May 5, 2006. The Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) consisted of persons who represented the interests affected by the proposed rule (i.e., charter bus companies, public transportation agencies—recipients of FTA grant funds) and other interested entities.

The CBNRAC included the following organizations:

American Association of State Highway and Transportation Officials;
American Bus Association;
American Public Transportation Association;
Amalgamated Transit Union;
Capital Area Transportation Authority, Lansing, Michigan;
Coach America;
Coach USA;
Community Transportation Association of America;
FTA;
Kansas City Area Transportation Authority;
Lancaster Trailways of the Carolinas;
Los Angeles County Municipal Operators Association;
Monterey Salinas Transit;
National School Transportation Association;
New York Metropolitan Transportation Authority;
Northwest Motorcoach Association/Starline Luxury Coaches;
Oklahoma State University/The Bus Community Transit System;
River Cities Transit, Pierre, South Dakota;
Southwest Transit Association;
Taxicab, Limousine & Paratransit Association;
Trailways; and
United Motorcoach Association.

The CBNRAC met in Washington, DC, on the following dates in 2006:
May 8–9
June 19–20
July 17–18
September 12–13
October 25–26
December 6–7

FTA hired Susan Podziba & Associates to facilitate the CBNRAC meetings and prepare meeting summaries. All meeting summaries, including materials distributed during the meetings, are contained in the docket for this rulemaking (#22657). During the first meeting of the CBNRAC, the committee developed ground rules for the negotiations, which are summarized briefly below:

○ The CBNRAC operates by consensus, meaning that agreements are considered reached when there is no dissent by any member. Thus, no member can be outvoted.

○ Work groups can be designated by the CBNRAC to address specific issues or to develop proposals. Work groups are not authorized to make decisions for the full CBNRAC.

○ All consensus agreements reached during the negotiations are assumed to be tentative agreements contingent upon additional minor revisions to the language until members of the CBNRAC reach final agreement on regulatory language. Once final consensus is achieved, the CBNRAC members may not thereafter withdraw from the consensus.

○ Once the CBNRAC reaches consensus on specific provisions of a proposed rule, FTA, consistent with its legal obligations, will incorporate this consensus into its proposed rule and publish it in the **Federal Register**. This provides the required public notice under the Administrative Procedure Act

[18] Id. at 37.
[19] Id. at 38.
[20] Id. at 11.

(APA), 5 U.S.C. 551 *et seq.*, and allows for a public comment period. Under the APA, the public retains the right to comment. FTA anticipates, however, that the pre-proposal consensus agreed upon by this committee will effectively address virtually all the major issues prior to publication of a proposed rulemaking.

○ If consensus is reached on all issues, FTA will use the consensus text as the basis of its NPRM, and the CBNRAC members will refrain from providing formal negative comments on the NPRM.

○ If the CBNRAC reaches agreement by consensus on some, but not all, issues, the CBNRAC may agree to consider those agreements as final consensus. In such a case, FTA will include the consensus-based language in its proposed regulation and decide all the outstanding issues, taking into consideration the CBNRAC discussions regarding the unresolved issues and reaching a compromise solution. The CBNRAC members would refrain from providing formal negative comments on sections of the rule based on consensus regulatory text, but would be free to provide negative comments on the provisions decided by FTA.

○ In the event that CBNRAC fails to reach consensus on any of the issues, FTA will rely on its judgment and expertise to decide all issues of the charter regulation, and CBNRAC members may comment on all components of the NPRM.

○ If FTA alters consensus-based language, it will identify such changes in the preamble to the proposed rule, and the CBNRAC members may provide formal written negative or positive comments on those changes and on other parts of the proposed rule that might be connected to that issue.

A complete description of the ground rules is contained in the docket for this rulemaking.

Finally, the CBNRAC reached consensus on the issues the committee would consider during its negotiations. The committee agreed to consider the four issues included in the Conference Committee report, noted in the previous section of this preamble, and these four additional issues:

1. A new process for determining if there are private charter bus companies willing and able to provide service that would utilize electronic notification and response within 72 hours.

2. A new exception for transportation of government employees, elected officials, and members of the transit industry to examine local transit operations, facilities, and public works.

3. Review and clarify, as necessary, the definitions of regulatory terms.

4. FTA policies relative to the enforcement of charter rules and the boundary between charter and mass transit services in specific circumstances, such as university transportation and transportation to/from special events.

1. Facilitator's Final Report

The facilitator, Susan Podziba, submitted her report to FTA on March 6, 2007. The final report summarizes the proceedings of the CBNRAC including the agreement reached on regulatory language for the NPRM and identifies outstanding issues. The facilitator noted in her final report that:

> As a result of the negotiated rulemaking process initiated by FTA, the revised Charter Service regulations will account for the interests, concerns, and nuances that were raised by all CBNRAC members. Though the negotiations remained difficult, and, at times, antagonistic throughout the seven months of meetings, CBNRAC members remained committed and worked hard to identify consensus solutions for each issue. As a result of the intensive discussions and multiple proposals and counter-proposals offered to resolve the twelve outstanding sub-issues, FTA has a clear understanding of the interest and concerns of both the public transit and private charter stakeholders as well as the range of options available for deciding those issues. (Final Report, page 20.)

We would like to underscore the facilitator's conclusion and thank all members of the CBNRAC for their efforts. We also agree with the facilitator that, as a result of the negotiations, we have a clear understanding of the interests involved with the revision of the Charter Service regulations.

D. NPRM

On February 15, 2007, FTA published a NPRM in the **Federal Register** (72 FR 7526). The NPRM was a complete revision of 49 CFR part 604. According to the agreement established during the negotiations, FTA included in the NPRM all of the provisions on which the CBNRAC reached consensus. This amounted to a little more than 80 percent of the rulemaking. For the other 20 percent, FTA used its discretion, informed by the discussions during the negotiations, to develop its proposals.

1. Overview of Comments Received on the NPRM

We received over 300 comments in response to our NPRM. We heard from 160 public transit agencies, 65 private charter operators, 25 public associations, 16 members of the public, 13 state departments of transportation, 11 private charter associations, 11 cities, 10 universities, four public officials, three air transport groups, and three anonymous comments.

We received several comments from participants on the CBNRAC. Some comments were in full support of the proposals contained in the NPRM and other comments rejected the proposals. Even though some of the comments submitted by members of the CBNRAC did not conform to the agreement reached on December 6, 2006, FTA retained much of the consensus language. In addition, we received many helpful comments on ways to improve the regulatory language and we made changes based on those comments.

2. General Comments

There were a number of comments on cross-cutting issues that we address before the section-by-section analysis. Specifically, we received comments about the lack of appendices in the NPRM, fully allocated costs, and when a customer specifies the type of equipment. In addition, we received several comments questioning our intentions regarding some of the proposals included in the NPRM.

a. Lack of Appendices

When we published the NPRM, we made reference to appendices we intended to include in the final rule. Appendix A would be a list of the 64 Federal programs discussed and provided during the CBNRAC negotiations. This list is not unique; rather, other Federal agencies reference this list and the list is available on FTA's public Web site, *http://www.fta.dot.gov*. In addition, the list of Federal programs was provided to all of the members of the CBNRAC during negotiations and is in the docket for these proceedings. Appendix B would provide guidance on what FTA would consider when removing a registered charter provider or qualified human service organization from the FTA Charter Registration Web site. Appendix C would be a list of questions and answers to provide guidance to recipients regarding the new provisions of the rule.

Regarding the lack of appendices in the NPRM, a large public transportation association and several public transit agencies stated ''we are troubled by the absence of a draft Appendix A (listing the federal programs that would qualify a social service agency to receive services under an exception). Although we anticipate that all of the more than five dozen federal programs under the United We Ride umbrella will be included, we believe FTA should state

as much or provide a draft Appendix A for comment.''

Appendices are not regulatory text and do not carry the force and effect of law. In fact, the Office of Federal Register specifically prohibits an appendix from containing regulatory requirements:

> Rules and proposed rules. Use an appendix to improve the quality or use of a rule but not to impose requirements or restrictions.
>
> *Use an appendix to present:* (a) Supplemental, background, or explanatory information which illustrates or amplifies a rule that is complete in itself; or (b) Forms or charts which illustrate the regulatory text.
>
> You may not use the appendix as a substitute for regulatory text. Present regulatory material as an amendment to the CFR, not disguised as an appendix.
>
> *Material in an appendix may not:* (a) Amend or affect existing portions of CFR text; or (b) Introduce new requirements or restrictions into your regulations.[21]

Further, as noted above, an appendix is explanatory, and, therefore, according to the Administrative Procedure Act, notice and comment is not required:

> Except when notice or hearing is required by statute, this subsection does not apply—
>
> (A) To interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or
>
> (B) When the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[22]

Based on the above, and the fact that proposed information for the appendices was widely available to the public before publication of the NPRM, we made the decision not to include appendices at the NPRM stage.

b. Fully Allocated Costs

Our proposed rulemaking did not include a requirement for recipients to calculate their fully allocated costs. We decided not to include the provision primarily because a fully allocated cost requirement has the potential to interfere with our efforts to support public transit agencies as mobility managers within their communities. In addition, we are very concerned that a fully allocated cost requirement would hinder our attempts to negotiate with other federal agencies to develop cost allocation principles to share fairly the cost of human service transportation.

Private charter operators submitted comment urging us to reconsider our proposal. One comment, which represents a consolidated opinion of several of the private charter operators on the CBNRAC, stated that ''the admonition to develop 'fair charges' and to recover some percentage of marginal operating costs consistent with the public purpose of the service is useless as either a regulatory tool or guidance to transit agencies. It also provides no protection to private operators. The need for transit agencies to recover fully allocated costs is present even for service provided under one of the many exceptions in this proposed rule.'' They contend that, like other social programs, if the Federal Government wishes to subsidize charter service for certain social service organizations, it can make direct subsidy payments to those organizations instead of creating subsidized public bus service that undercuts the price structure in the private market.

In addition, one international private charter association suggested that FTA impose a new fully allocated cost requirement: ''A system-wide cost per revenue hour dollar figure (approved operating budget divided by revenue hours of bus service) is the fairest and simplest way of estimating what it would cost per hour to provide bus service to a third party. This method does not necessarily capture the capital cost consumed, overtime driver hours or preparation time or the infrastructure shared to make this service available to a third party, but on balance a system-wide cost per revenue vehicle hour times total hours of the requested service is the closest to what the actual cost would be to provide the service.''

We understand this point of view, but disagree that requiring fully allocated costs is necessary. The rule as written prohibits a public transit agency from providing charter service if a private charter operator expresses interest in providing the service. In addition, the exceptions contained in the rule are areas of charter service that the private charter coalition conceded are areas where public transit agencies can provide community-based charter services that would not otherwise be served in a cost-effective manner by private operators.

Not including fully allocated cost provisions in the final rule is appropriate given our efforts to establish coordinated public transit human service transportation and the protections provided for private charter operators in the final rule such as notification procedures and cease and desist orders.

c. When a Customer Specifies Equipment

In the NPRM, we did not address specifically what would occur if a customer specifies certain equipment in their request for charter service. The only reference we made to specific equipment was in the preamble where we discussed the fact that rubber tire trolley buses are considered buses for purposes of this rulemaking.

We received several comments on this topic unrelated to our discussion of including rubber tire trolley buses within the scope of buses generally. Public transit agencies encouraged us to allow a customer to specify the type of equipment they would like use. A member of the public encouraged us to exclude electrically powered trolleys from the scope of the rule. Another member of the public suggested that the notice recipients send to private providers ''should also include a description of the specific equipment requested by the customer and not just 'buses or vans.' This comment goes on to state ''any new rule allows the purchaser of the service to decide what kind of equipment it needs. To that end, the notice to private providers should allow for a reasonable amount of specificity regarding the requirements for a particular service.''

Another comment echoed the above sentiment by stating ''I should not be forced to obtain services from private charter operators who do not have the proper coach equipment, to spend more money for single door highway coaches, with high floors that take longer to load and unload, that are not geared for city street/shuttle operations, thereby forcing me to obtain more equipment for frequency of service * * *.''

The comments regarding types of equipment raise a tricky issue in balancing protections for private charter operators with the need for transit agencies to satisfy community demands. In order to provide attractive ''fun'' alternatives to encourage downtown employees or tourists to use transit in congested corridors, transit agencies may acquire rubber tire replica trolleys. These trolleys can become a popular enough local attraction that they may be sought for private leisure charters such as weddings. The statute, however, addresses charter without regard to equipment type. The FTA regulation relates to the provision of transportation service, not entertainment, which is why sightseeing is also excluded from the statutory definition of ''public transportation.'' If there is sufficient demand for such equipment, private charter operators may eventually

[21] National Archives and Records Administration, Office of the Federal Register, Federal Register Document Drafting Handbook, page 7.9 (October 1998).

[22] 5 U.S.C. section 553(b).

acquire new equipment to serve this emerging market. In the meantime, however, FTA sees no reason to amend the rule to allow an exception under which a customer may specify the type of vehicle beyond requesting a bus or a van.

Likewise, if there were sufficient public demand for low-floor, double door vehicles, or size compatibility with streets to be traveled, and private charter operators do not have that equipment, then private charter operators may eventually acquire new equipment to serve that market as well. But, again we decline to amend the rule to allow for such an exception for public transit agencies.

d. Other Concerns

We received several comments questioning the intentions of the FTA in proposing the NPRM provisions that we did. One comment from a transit agency stated ''The tone of this proposed rule suggests a presumption of 'guilt' on the part of all transit providers.'' Another transit agency put it this way: ''Transit providers should not have to prove, on a daily basis, that they are following the rules.'' One public citizen asked: ''When was legislation passed that authorized FTA to stop supporting transit.'' Or, as a Midwestern transit agency stated ''I am opposed to federal requirements that squash our attempt to generate some extra revenue to support the transit system.''

FTA went to great lengths to involve all of the affected and interested parties in the CBNRAC negotiations. We prepared background materials, brought in speakers to assist the committee, and hired a highly competent and effective facilitator to assist throughout the process. In addition, all of the materials and notes were posted to the docket so that members of the public could follow the proceedings and each meeting had a public comment period should any member of the public wish to make comments about the proceedings. We were able to reach consensus on 80 percent of the rulemaking. This means the CBNRAC, which included small, medium, and large transit agencies from the West, South, Midwest, North and East, were able to agree on a vast majority of the regulatory text for the NPRM. The provisions were developed with the intention of promoting public transit and protecting the private charter industry. As indicated in the history section of this document, achieving the right balance has been a challenge for many years. We accepted this challenge because a negotiated rulemaking was a novel approach to addressing the issues that have plagued this regulation for years.

Given the above, we regret that some commenters perceived the proposed rule to be anti-transit. The tone of this rulemaking is the same as the current regulation and the same as any regulation that prescribes certain behavior. We are in the business of promoting and supporting transit agencies in their mission to provide community-based services. We recognized and promulgated exceptions to the charter service regulation that support transit agencies providing charter services to the elderly, persons with disabilities, and people with low income.

In addition, we carefully considered the interests of parties impacted by this rulemaking. The negotiated rulemaking was a powerful tool for collecting that information. We also considered all of the comments received on the proposal and modified some of the regulatory text based on the suggestions included in comments.

2. Section-by-Section Analysis

In addressing the comments received, we divided the comments according to the applicable rulemaking section. For each section for which we received substantive comments, we provide a brief summary of the purpose of the regulatory text, we summarize the relevant and representative comments received, and then we describe our decision whether to modify that particular provision. If we modified the provision, then we describe the modification. If we decided not to accept the proposed modification, then we explain why and adopt the language as proposed in the NPRM. For sections of the rule where we did not receive substantive comments, those provisions are hereby adopted as final.

Subpart A—General Provisions

Section 604.2—Applicability

The purpose of this provision was to state early on in the regulation that is required to comply with this rulemaking, who is exempt from the rule's requirements, and to set out certain situations in which this rule does not apply.

One public transportation association noted that ''the draft rule provides for application to all activities of FTA grantees that are public transit agencies, without regard to the presence or absence of federal funding * * *'' We also heard this comment from several public transit agencies. In addition, one transit agency suggested that this rulemaking not apply to those that receive a minimal amount of Federal funds.

Agency Response: We note that in order to be an ''FTA grantee'' a transit agency has accepted Federal funds from FTA. The commenter correctly notes that to conclude otherwise would ''exceed FTA's authority and its stated purpose of protecting private entities from federally-assisted competition.'' Thus, as stated in the NPRM, this rulemaking applies to those that receive Federal financial assistance from FTA.

We do not believe setting a minimum amount of Federal funding to trigger application of this rule is necessary. A transit agency always has the option to segregate locally funded and maintained vehicles and use those vehicles to provide charter service. To be clear, however, it is not just purchasing a vehicle with Federal dollars that triggers the application of these requirements. Housing the vehicle in FTA-funded facilities or using FTA-funded equipment to maintain the vehicle also triggers application of this rule. A complete segregation is necessary to avoid the application of the requirements of this rule.

We also received a comment from a state association asking us whether the charter service regulations apply to tribal nations. Under our Notice of Funding Availability for the Tribal Transit Program, published in the **Federal Register** on August 15, 2006 (71 FR 46959), the charter service regulation applies to tribal nations under that program. The charter service regulations also apply to tribes that receive FTA grants as recipients or subrecipients under other programs. That being said, however, the final rule provides an exemption for section 5311 recipients, which encompasses many tribal programs that use FTA-funded equipment for program purposes (defined as: ''transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and/or low income individuals); this does not include exclusive service for other groups formed for purposes unrelated to the special needs of the targeted populations.'').

FTA considered the comments on this subsection, but does not believe the comments warrant a change to the proposed language, and, therefore, the language is adopted as proposed.

Section 604.2(c)—Private Charter Exemption

This provision exempts from the rule's coverage private charter operators who receive Federal financial assistance either directly or indirectly under 49

U.S.C. sections 5307, 5309, 5310, 5311, 5316, and 5317, or section 3038 of the Transportation Equity Act for the 21st Century (TEA–21).

The main comment received regarding this subsection stated: ''In removing private charter operators from its scope, it excludes up to 40 percent of the rural transit network from these rules, thus forcing half the network to follow rules and procedures that are waived for the private sector partners.'' Another transit agency stated ''we do not believe that private charter operators should be treated different from other organizations that receive Federal funds. Allowing some private charter operators to not comply with the charter regulation and receive Federal funds put those private charter operators at a competitive advantage over other private operators that do not receive Federal dollars. Either the receipt of Federal funds is an important factor or it isn't.''

Agency Response: We respond to these comments by noting our rationale in the NPRM for including this provision: ''The receipt of funds from the Federal government should not interfere with a private charter operator's business. This regulation has its genesis in the protection of the private charter operators from unfair competition by federally subsidized public transit agencies. To subject private charter operators to the charter service regulations undermines the very purpose of these regulations.'' We cite three reasons in support of this analysis.

First, we think some comments may have confused the many private not-for-profit agencies that provide public transit service in rural areas with the private charter operators protected by this rule. It is not FTA's intent to apply the requirements of the rule differently to public transit agencies depending on whether they are governmental or non-governmental entities.

Second, FTA's Over-the-Road Bus Program is specifically designed to provide Federal assistance to private charter operators so that they can retrofit their vehicles to make them accessible and comply with the Americans with Disabilities Act. This is a federally sanctioned activity, and, thus, to apply the charter regulations would run counter to this Federal program. The same argument also holds true for those private charter operators that receive Federal funds under 49 U.S.C. section 5311(f), which provides a limited amount of Federal support for running routes in rural areas. The point here is that there are clear situations under which the Federal government sees a benefit to providing Federal tax dollars to private charter operators.

Third, public transit agencies may enter into a contract with private charter operators to purchase transportation services using the private charter operator's vehicles. The fact that a private charter operator contracts with a public transit agency should not have the unintended consequence of preventing the operator from using those vehicles, or other vehicles in its fleet, to provide charter service. If a private charter operator, however, provides fixed route public transportation using federally funded buses or vans under contract to a transit agency or other public entity such as a State Department of Transportation, the private charter operator stands in the shoes of the transit agency and is subject to the charter service regulations in regard to the use of those FTA-funded vehicles. That private charter operator, however, would not be prevented from using other vehicles in its private fleet to provide charter service.

Finally, the comment regarding this section's provisions placing one private charter operator in a competitive advantage over another private charter operator strikes us as disingenuous. No private charter operator raised this issue, and if it truly was a concern, we have to believe at least one private charter operator would have raised it.

Thus, while FTA rejects the proposed modifications to this section, we include language to clarify that the charter service regulations do not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under the programs listed or to the non-FTA funded activities of private charter operators that receive assistance under section 3038 of TEA–21.

Subsection 604.2(e)—Exemption for Transit Agencies

This provision exempts from the charter service regulation recipients who receive funds under 49 U.S.C. sections 5310, 5316, or 5317 and provide charter service consistent with the Federal program purpose.

We heard from numerous public transit agencies encouraging us to expand this provision. The most common request was to expand this provision to include recipients under 49 U.S.C. section 5311. The second most common request was to expand the provision to exclude 49 U.S.C. section 5307 recipients that operate 50 or fewer buses in peak hour service.

Agency Response: The CBNRAC considered the request to expand the exemption to section 5311 recipients. The private charter caucus opposed this provision because it believed it would lead to abuse because there is no effective way to limit those activities. The second request regarding 5307 recipients is a new one. We considered both options and the concerns raised with expanding the coverage of this section.

We believe that this section can be expanded safely to include recipients of section 5311 funds for two reasons. First, section 604(2)(e) already limits the exception ''to program purposes only.'' We added a definition of program purposes that states: ''transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and or low income individuals); this does not include exclusive service for other groups formed for purposes unrelated to the special needs of these targeted populations.''

Second, we believe this expansion is appropriate given FTA's efforts to support coordinated public transit human service transportation activities. Some of the comments received noted that without the exemption this provision could have a chilling effect on those activities, which is something FTA wants to avoid. Thus, limiting section 5311 recipients'' provision of charter service to program purposes, as defined in the regulations, provides a limitation on those services we believe will protect private charter operators. In addition, the revised enforcement provisions will also provide a counterbalance to this expansion if it is abused.

We reject the second request—excluding 5307 recipients with 50 or fewer buses—because the change might unduly weaken the protections provided by the rule to private charter operators. In an urbanized area, even one served by a small transit system with 50 or fewer vehicles, there are more likely to be private charter operators available than in rural areas. In other instances, the transit system would be able to provide charter service under other exceptions of the rule, so this new exception would be unnecessary.

We have therefore amended 604.2(e) to include 49 U.S.C. section 5311 in the list of programs exempted from the requirements of the charter service regulation when the charter service provided supports program purposes.

Section 604.2(f)—Emergency Exemption

This proposed provision exempts recipients from the charter service requirements in the event of a national,

regional, or local emergency lasting fewer than three business days.

We heard from several public transit agencies regarding the three day limitation. Many expressed disappointment that the provision would limit a public transit agency's ability to assist in the event of an emergency. Others expressed concern that local emergencies are not included, but could pose an equal amount of danger to the surrounding community. One example provided was a train derailment where noxious fumes engulfed the community where public transit is the logical choice for evacuating the community quickly and efficiently. Another comment asked why this provision does not include security training exercises.

Agency Response: Considering the concerns raised, we have decided to amend this section to allow for transit agencies to respond to declared emergencies. We will add the following language to 604.2(f): ''Actions directly responding to an emergency declared by the President, Governor, or Mayor or in an emergency requiring immediate action prior to a formal declaration.'' In addition, we felt it necessary to provide a time limitation and so we are changing the three day limit to 45 days. Thus, a transit agency has 45 days to assist with emergency response before having to report its activity to the emergency response docket created under subpart D of 49 CFR part 601. Security training exercises are covered by the emergency preparedness exemption in section 604.2(d).

Section 604.3—Exemption

This provision sets up a mechanism by which transit agencies may ''opt out'' of the charter service regulations.

We heard from transit agencies that this provision is not necessary, the certification procedures were burdensome, and there appears to be no purpose for the affidavit.

Agency Response: While we thought this provision would assist a public transit agency to clearly and unambiguously state it does not intend to provide charter services, we are convinced by the comments that this provision is unnecessary. Therefore, we have removed the exemption section from the final regulation.

Section 604.4—Definitions

This provision sets out the applicable definitions for this part. Since the section contains several definitions, we will only discuss those definitions where the public submitted comments. All other definitions are adopted as proposed. We also added several new definitions as a result of changes we made to the regulation based on the comments we received.

Section 604.3(c)—Definition of ''charter service''

This is a key provision in the charter service regulation. The definition of charter service identifies what service by public transit agencies is considered charter service.

Generally, public transit agencies voiced concern that the proposed definition does not ''recognize the realities of local public transportation service by having the flexibility to add and modify service for temporary situations, such as community events and employers opening temporary facilities.'' A member of the public submitted a comment that noted the proposed definition ''potentially undermines coordinated efforts between local governments and risks decreasing the efficiency and cost-effectiveness of service while jeopardizing ridership incentives for universities and transit systems.'' In addition, several transit agencies submitted comments stating ''while the proposed rulemaking does address the issues raised in the conference committee report, it also far exceeds what seems to be the intent of Congress by providing a vague and poorly explained definition of charter that could have the impact of redefining the very definition of public transportation.''

In fact, most transit agencies submitted concerns about the definition not including the term ''exclusive.'' One public transportation association noted that ''the concept of exclusivity—often referred to as ''closed door'' service—has been integral to the definition of charter service for more than 20 years and is necessarily the primary means of determining whether transportation is public transportation or a private service.'' A public transit agency warned that ''the failure to include exclusivity in the charter definition has the potential to change the definition of public transportation.'' One airport ground transportation association requested that ''the proposed federal definition of charter service not supersede local state, city and airport regulatory definitions currently in place for private motor carriers of passengers to and from airports by maintaining the concept of exclusivity.''

Some public transit agencies offered alternatives to the proposed definition of charter service. A Midwestern city provided the American Bus Association's quick reference guide on the definitions of charter, mass transportation, and sightseeing. Three members of the public suggested that the definition should be ''a point to point service that is not open to the public, and not of a routine nature.'' An air transport company recommended that the definition include ''at a fixed charge for a motor vehicle.'' An east coast public transit authority set forth the following indicia of charter service: ''for the sole use of a distinct group of people; routing and frequency of service solely determined by those people using the service or their sponsor; not open to the general public; identification or affiliation required to board; one-time, nonrecurring event, with no regular pattern; and service not on a pre-published schedule or Web site.''

We also heard from public transit agencies that the examples included in the definition of charter service should be removed. Several public transit agencies stated the examples were unclear and inconsistent. One east coast public transit association noted that ''there is no simple, rigid template that can simply and routinely be applied to every situation to determine whether or not a service is or is not mass transit. Attempting to impose one at the federal level will inevitably result in a great disservice to the public at large. However, reasonable and fair guidelines would be appropriate and useful to all involved parties.''

From the private sector side, we heard from two private charter operator coalitions regarding the definition of charter service. They stated that while the CBNRAC did not reach consensus on the definition, the parties did agree that ''charter service has three components: (1) Transportation of a group of persons pursuant to a single contract with a third party; (2) a fixed charge; and (3) according to an itinerary determined by someone other than the public transit agency.'' In addition, the coalitions urged FTA to not ''impose a black or white approach to defining charter service, but should continue to look at the intent of the service and whom the service is designed to benefit.'' They also noted that the lack of a written contract should not be dispositive in determining that service is charter service. One of the coalitions recommended a definition of charter service as ''providing transportation service, using buses or vans, principally to benefit a group of riders with mutual purpose and destinations.'' This association also questioned the need to indicate who controls the service as it may conflict with interpretations and the intention of the rules: ''Who 'controls' the itinerary has certainly been an interpretation recipients have long abused, particularly in special

events.'' This association also recommended that ''fixed charge'' should be removed because it is often abused.

Agency Response: By far, this section received the most comments. Since the CBNRAC could not reach a consensus on the definition of charter service, we also received comments from several of the committee members regarding our proposed definition. Considering all of the comments received regarding the definition of charter service, we decided to shorten and simplify the definition, while maintaining flexibility in determining the intent of the charter service.

First, we added back the concept of exclusivity to the definition of charter service. In the past, this word has caused problems because a few public transit agencies have used the term as a loophole to avoid the requirements of this rule. We address this issue by adding a definition of ''exclusive''—service that a reasonable person would conclude is intended to exclude members of the public—to the list of definitions. Further while we do not agree that a 20 year history is reason enough to add the term exclusive back in the definition, we do believe that exclusivity is a good indication of intent to perform charter service.

Second, we removed all of the examples included in the definition of charter service. Instead, we provide factors that we will consider in determining the intent of the service. We also believe that this revised definition will allow transit agencies the flexibility needed to provide public transportation to address traffic mitigation associated with an event, as well as being able to serve community-based public transportation.

Third, we make clear in the definition that it does not apply to demand response services provided to an individual. We also provide a definition of ''demand response,'' which is discussed in the next section.

Finally, we have added a provision to the definition of charter service to address events that are limited in duration and for which the public transit agency charges a premium fare or for which a third party pays for the service in whole or in part. While the new definition does not prevent a public transit agency from establishing, on its own, temporary or irregular routes to respond to community demands, we believe that the nature of such service should be to fulfill a public purpose. Thus, the definition of charter service includes service by a public transit that is irregular or on a limited basis for a premium fare that is greater than the usual or customary fixed route fare or service for which a third party pays all or part of the costs for the service. We believe service that fits in either of those categories represents an opportunity for private sector participation, and, therefore, if the public transit agency wishes to provide such service it must give prior notification to registered charter providers in its geographic service area.

Section 604.3(g)—Definition of ''demand response''

This section is new and is based on comments we receiving asking us to define the term as used in the definition of ''charter service.''

We have taken the definition of ''demand response'' from our New Freedom Circular, which states: ''any non-fixed route system of transporting individuals that requires advanced scheduling by a customer, including services provided by public entities, nonprofits, and private providers.''

Section 604.3(h)—Definition of ''interested party''

This provision defines who is an interested party for purposes of filing a complaint with FTA.

We received only one comment regarding this definition and it stated that the definition was overly broad and hard to determine who, in fact, could file a complaint.

Agency Response: This particular provision represents consensus language from the CBNRAC. We believe that the parties identified in the list of ''interested parties'' are clear, and, therefore, the provision is adopted as proposed.

Section 604.3(k)—Definition of ''pattern of violations''

This provision defines what constitutes a pattern of violations for purposes of 49 U.S.C. section 5323, which states in relevant part: ''In addition to any remedy specified in the agreement, the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate if the Secretary finds a pattern of violations of the agreement.''

We received several comments expressing concern about our proposal to define pattern of violations as ''more than one finding of non-compliance with this Part by FTA beginning with the most recent finding of non-compliance and looking back over a period of 72 months.''

Comments received focused on two aspects of this proposed definition. First, most were concerned that a finding of non-compliance should be for the same provision and not different provisions. Second, several comments stated that it was unfair to examine 72 months and the time period should be two or three years at the most. There was also a misconception that the new rule would retroactively look back over a recipient's compliance record. One comment, which is typical of the comments we received from recipients, stated the issue as follows: ''We suggest that the definition be revised to indicate that there must be at least three violations in three years and the application of this new definition should occur when the rule is final. Also, the violations must be related in nature (i.e., not totally disparate issues) in order to show a pattern.''

Private charter operators, on the other hand, agreed with the proposed definition, but requested that FTA settle the issue of whether a single complaint against a recipient can establish a pattern of violations.

Agency Response: We understand recipients' concerns regarding this definition and the potential finding of a pattern of violations for not complying with paperwork requirements. In addition, we agree with the suggestion that violations should be related and not completely disparate. Thus, we have amended the definition of ''pattern of violations'' to require that only unauthorized charter service violations can constitute a pattern of violations. We believe that mandatory withholding of Federal funding should only be reserved for those cases involving unauthorized charter service only. This does not mean, however, that there can never be a situation in which FTA will not withhold funds for paperwork (e.g., failure to record charter service or failure to post quarterly reports) violations. Rather, we are simply stating that for mandatory withholding of Federal funds under the new statutory provision contained in SAFETEA–LU, the pattern of violations must be established based on unauthorized charter service.

That being said, it is possible to establish a pattern of violations in one complaint. For instance, if one complaint properly documents three distinct charter service trips that are in violation of Part 604, then FTA could consider those three allegations as constituting a pattern of violations. We believe this is a reasonable resolution to the concern of private charter operators that a single complaint could establish a pattern of violations.

To be clear, however, each instance of a charter service violation must be related to an event and not a single

instance of unauthorized charter service. In other words, the provision of charter service for a flower show that is not in conformance with these regulations would be an event. A single complaint alleging unauthorized charter service, in order to properly assert a pattern of violations, would have to include more than unauthorized service to a flower show. In order to assert a pattern of violations, a single complaint would have to include facts demonstrating unauthorized charter service to a flower show, a golf tournament, and an auto exhibition, for example.

In addition, we decline to shorten the examination period to two or three years. While we considered including a three year period to correspond with triennial reviews, not all recipients are subject to triennial reviews and the six year period is consistent with other operating administrations within the Department of Transportation that examine a six year compliance history. Thus, we retain the six year period, which begins on the effective date of this rule.

Section 604.4(o)—Definition of ''recipient''

This provision defines who is a recipient.

We received several comments about this definition because some were confused as to whether the term includes ''subrecipients.''

Agency Response: We have amended the definition to state ''including subrecipients'' to make clear that the regulation applies to direct recipients of FTA financial assistance as well as subrecipients of FTA financial assistance.

Section 604.4(t)—Definition of ''violation''

This is a new provision to the final rule and it would define what constitutes a violation for purposes of the charter service regulations.

Several public transit agencies asked us to define what a ''violation'' is.

Agency Response: We added a new definition to this section to define violation as ''a finding by FTA of a failure to comply with one of the requirements of this Part.''

Section 604.5—Charter Service Agreement

This section discusses the terms of the Charter Service Agreement which is part of the Certifications and Assurances recipients are required to enter into as a condition of receiving Federal funds (49 U.S.C. section 5323(d)).

One transportation association noted that there was an inconsistency between our intention not to apply the charter service requirements to third party contractors and the terms of the charter service agreement.

Agency Response: In order to address this inconsistency, we have added the clarification that this provision applies only to a third party contractor when they are using vehicles purchased with FTA funds.

Subpart B—Exceptions

Section 605.6—Government Officials on Official Government Business

This provision set out an exception for recipients to provide charter service to government officials on official business. We also proposed not to apply this provision to transit agencies with 1,000 or more buses in peak hour service.

We received numerous comments from public transit agencies on this provision to limit the number of bus hours to 80 annually, as proposed by the private charter caucus.

Comments we received were along the following lines: ''The limit is arbitrary and does not support or respect local cooperation. The transportation of public officials by a public agency should not be considered charter.'' One comment on this topic stated: ''How about whoever wrote this NPRM comes on down here to tell our government officials who sponsor the taxes that keep our transit systems operating that they have limited number of hours that they can utilize the charter service of the transit system.'' The same comment stated that they do not have resources ''to conduct boarding surveys that distinguish the government officials from anyone else that may join them on a charter trip.'' Some public transit agencies applauded our effort to recognize this service as an exception and felt the provision to allow the Administrator to grant additional hours was sufficient. Those who were not pleased with the NPRM suggested that FTA modify the provision to allow for a greater number of hours for public transit agencies located in state capitols. Others suggested that the limit be based on the size of the recipient's geographic service area.

A private charter operator coalition objected to our provision to allow additional hours upon request from a recipient. They urged that such additional hours should only be granted in extenuating circumstances, which should be ''invoked very rarely.'' They also warned that this exception should not ''swallow up the general prohibition'' of recipients providing charter service. This commenter also requested at least 72 hours notice of all requests for additional hours under this exception.

Finally, regarding our proposal not to apply this provision to recipients with 1,000 or more buses in peak hour public transit service, we heard from three of the largest east coast transit agencies that strongly opposed the provision. Specifically, they noted opposition to ''any regulatory change that imposes a different application based on the size of the transit property.''

Agency Response: To be very clear, transporting a group of government officials for official government purposes is charter service under the existing definition of charter service. Government officials that happen to board a fixed-route vehicle would not count toward the 80-hour exception. This exception is targeted at government field trips such as visiting a new stadium or wastewater processing facility. It could also mean transporting City Council officials to a site or business officials, accompanied by government officials, touring a city for economic development purposes.

This exception is designed to allow recipients to provide charter service to government officials for official government business. Recipients may not provide charter service to governmental officials for non-governmental purposes. We have added language to the regulatory text to clarify this point. We have also added a definition of government official, which states '' 'government official' means an individual appointed or elected at the local, state, or Federal level.''

Since the transportation of government officials for government purposes is charter service under the current regulations, as noted in the NPRM, we believe that the 80 charter service hours per year is appropriate because it is the baseline number of hours the private charter operators on the CBNRAC agreed to. On the other hand, we recognize that there may be special circumstances that might arise that could call for additional bus hours during the year. If these circumstances arise, we have a provision that allows the FTA Administrator flexibility to allow those additional hours in extenuating circumstances. Private charter operators requested that they have the opportunity to comment on any request for additional hours. To address this concern, we will add a Government Officials docket (*http://www.regulations.gov*; FTA–2007–0020) for the purpose of logging these requests for additional hours. Private charter

operators can sign up for notification when FTA places a request in the docket. If the request raises serious concerns, the private charter operator can contact the Ombudsman for Charter Services (*ombudsman.charterservice@dot.gov*) to express those concerns. The decision to grant a particular request is completely within the discretion of the FTA Administrator.

Regarding the exception of transit agencies with 1,000 or more buses in peak hour service, this provision was the subject of consensus during the CBNRAC. During the negotiations, a CBNRAC member urged this exception to prevent large public transit agencies from being inundated with requests for charter service from government officials and qualified human service organizations. Private charter operators on the CBNRAC agreed to this provision. The response to this proposal, however, was negative. We heard from three large east coast transit agencies and we are convinced by their argument that large transit agencies should not be treated differently, and, therefore, we removed this provision from the final rule.

To conclude, we decline to modify the 80-hour annual limit. Since the transportation of government officials for government purposes was unauthorized charter service when provided by recipients under the old regulation, we believe the 80-hour limit per year is a legitimate threshold number for the new exception. In addition, we have eliminated the language treating transit agencies with more than 1,000 buses in peak hour public transit service differently.

Section 604.7—Qualified Human Service Organizations

This section provides an exception to the prohibition against recipients providing charter service if they provide charter service to qualified human service organizations (QHSO). We also proposed not to apply this provision to transit agencies with 1,000 or more buses in peak hour service.

The CBNRAC reached consensus on this provision because it recognized FTA's efforts to establish coordinated public transit human service transportation planning. In addition, this provision recognizes the President's Executive Order on coordinated transportation (Executive Order on Human Service Transportation Coordination, February 24, 2004).

The comments we received on this section primarily centered on the assertion that charter service provided to QHSOs should be completely exempt from the charter service regulations. Specifically, comments stated ''although the negotiators agreed that services could appropriately be provided to qualified social service agencies, the draft process is unnecessarily complicated and incomplete.'' These comments went on to state ''it is unclear how these additional criteria are to be evaluated (i.e., would a qualified social service agency certify such a mission? Would a public transit agency be obligated to investigate the basis for such a claim?) and it is unclear why FTA perceives a need for the additional criteria at all.'' These public transit agencies and associations advocated that the additional criteria should be eliminated from the rule. We also heard from several Midwestern transit agencies supporting our provision on QHSOs: ''We fully support the exceptions in 604.7 and 604.8 for government officials and qualified human service organizations.'' A private charter operator expressed a similar sentiment: ''FTA's new disclosure procedures for human service agencies and public operator trips are a positive step forward.''

Finally, we received several comments asking us to define the term ''struggling for self-sufficiency.''

Agency Response: The language in this section represents a consensus from the CBNRAC. The criteria included in the NPRM were the subject of much discussion during the negotiations and the subject of a special presentation from FTA ''United We Ride'' staff. The criteria are a reflection of the requirement of the President's Executive Order on transportation coordination.

In addition, regarding the comment as to whether a transit agency must investigate information provided by a QHSO, the FTA Charter Registration Web site is a tool for tracking registered charter providers and QHSOs. There is no requirement for public transit agencies to independently verify the information submitted by a registered charter provider or QHSO. Further, since registration on the Web site constitutes submission of information to the government, false submissions would be subject to sanctions under 18 U.S.C. section 1001, which includes potential criminal fines and imprisonment.

Regarding the exemption of transit agencies with 1,000 or more buses in peak hour service, we removed this provision from this exception based on comments received. (See discussion under ''Government Officials'' exception above.)

Finally, we changed the phrase ''struggling for self-sufficiency'' to ''low income,'' which is a more commonly understood term in the transportation industry.

This section is modified to remove the exception for recipients with 1,000 or more buses in peak hour public transit service, and change ''struggling for self-sufficiency'' to ''low income.''

Section 604.8—Hardship

In this provision we proposed to allow a transit agency in a non-urbanized area to provide charter service to an organization if a registered charter provider imposes minimum trip duration or the registered charter provided would have deadhead time that exceeds the total trip length.

Public transit agencies support this exception, but requested that it be extended to small urban areas with populations under 200,000. One public transit agency commented that ''FTA's proposed hardship exception is well-crafted and provides a reasonable objective standard for determining whether available private charter providers are too far away to be expected to provide cost-efficient service and scale that definition to the size of a particular charter. Expanding that provision to, at minimum, small, urban areas would allow those areas to be better served without impinging on the interests of private charter operators.''

Private charter operators opposed this exception. They contend that ''hardship is largely a myth and any rule addressing 'hardship' is likely obsolete and more likely to be used to harm private operators than relieve 'hardship.' '' In addition, they assert that the rule as written assumes the private market may not desire to serve certain needs, even if fulfilling the service may be at an economic loss and businesses routinely discount services, have sales, offer loss leaders, and utilize yield-pricing strategies. In theory, a recipient creates a ''hardship dependency'' when failing to allow the marketplace to respond.

Agency Response: We believe there is merit to retaining the hardship exception. Rural providers are in a unique position of not having many options to rely upon. Private operators are usually located in urban areas and the high number of deadhead hours is a reality for many rural communities.

On the other hand, we recognize that businesses often set minimum trip durations and to allow public transit agencies to provide charter service simply because the minimum trip duration exceeds the trip duration of the requested charter service could have a

negative impact on small, rural private providers.

Therefore, we amended the regulatory text to include small urbanized areas under 200,000 in population and removed the provision that would allow a rural public transit agency to provide service when the minimum trip duration exceeds the length of the requested service. In addition we collapsed this provision into a new section called ''Petitions to the Administrator,'' which is located in section 604.11. Because we have established a docket for this exception (Petitions to the Administrator docket *http://www.regulations.gov;* FTA–2007–0022), we have removed the reporting requirements for the hardship exception. Interested persons may simply track these requests through the docket system.

Section 604.9—Leasing FTA Funded Equipment and Drivers

This section discusses the ability of a public transit agency to lease equipment to a private charter operator.

Private charter operators submitted comments requesting that FTA advise ''recipients it is their responsibility to comply with the [leasing exception requirements] with emphasis placed on the requirement to certify the registered charter provider has exhausted all available vehicles of all registered charter providers in the recipient's geographic service area.''

Public transit agencies responded to this provision with the general concern that a recipient does not have the ability to determine if the private charter operator has capacity: ''The grantee should not be responsible for verifying the validity of any information provided by the leasing charter operator.'' Another comment stated it slightly differently: ''FTA will require public agencies to maintain proof offered by the lessor that no privately owned equipment is available but is unclear on whether the public agency must investigate independently or may take the proffer at face value.'' Yet another comment pointed out that ''while this is a well-intentioned and defensible condition, the rule should make it clear that recipient's obligation in this area is to ask whether this has been done and that a recipient may rely on the private charter operator's representation that it has, supported by documentation provided by the charter operator.''

Finally, one additional comment submitted by a public transit agency advocates against this exception because of the impact it will have on small private charter operators: ''There are two problems with this proposed exception. First it would be difficult to impossible for any private operator to guarantee that it has exhausted all of the available vehicles of all registered charter providers in a large municipal area. This would force recipients out of the charter leasing business and thereby deprive the recipient of much needed funds. Second, this provision also severely impacts smaller private charter operators who would either have to pay whatever fee is set by the larger private operator or turn away business. Such a scenario could eventually force smaller private charter operators out of business, which would then impact FTA's certification that this regulation would not have an impact on small businesses.''

Private charter operators also expressed concern with this provision. One of the consolidated responses for private charter operators who participated on the CBNRAC expressed concern that the current leasing provision allowed for sham transactions between a private charter operator with no vehicles and a public transit agency. The consolidated response noted support for the new provision because a private charter operator should have the first opportunity to provide charter bus service in the geographic service area.

Agency Response: We agree with the comments submitted regarding the concern about a public transit agency's obligation to investigate whether a registered charter provider has exhausted all of the available private charter vehicles in the geographic area. We have modified the proposed language to include a requirement that in order for a recipient to lease vehicles to a private charter operator, the operator must be registered on FTA's Charter Registration Web site.

Furthermore, we added a requirement that a private charter operator identify the number of vehicles it owns when it registers. Then, when a registered charter provider certifies that it has exhausted all of the private vehicles in the area, a recipient need only go to the Charter Registration Web site, note all of the registered charter providers in the geographic service area and the number of vehicles identified in the registration to verify that the registered charter provider's certification is accurate. No independent verification beyond this process is required by the regulations.

In addition, if the registered charter provider fails to exhaust the vehicles of other registered charter providers in the geographic service area, then the registered charter provider may be subject to a complaint for removal from the FTA Charter Registration Web site.

We have retained the requirement to exhaust all available privately owned vehicles in the geographic service area. This is a protection that the private charter caucus requested during the CBNRAC negotiations and the public transit caucus agreed to. We received a couple of comments indicating that a private charter operator should not have to contract with another private charter operator known to be ineffective. In order to address this concern we do not require a registered charter provider to lease vehicles from another registered charter provider against whom the first registered charter provider has filed a complaint for removal from FTA's Charter Registration Web site. To succeed on this point, however, a registered charter provider would have to allege facts sufficient to support removal as set out in 49 CFR section 604.21. (See also Appendix C for examples.)

Finally, since we moved the hardship exception to the new Petitions to the Administrator exception, the leasing exception has been renumbered to section 604.8.

Section 604.10—Events of Regional or National Significance

This section allows for the provision of charter service by public transit agencies for events of regional or national significance.

Private charter operators supported this provision, but requested that any petitions received by the Administrator should be subject to a notice and comment provision for registered charter providers. They also requested that FTA provide a clarification that only if all private operator vehicles have been exhausted should a recipient be allowed to provide charter service.

Public transit agencies were concerned that this provision would apply to events that have already been planned. In addition, one public transit agency stated ''public transit providers should be able to provide public transportation services for special events in their locality that promote economic development and show their community without the express approval of the Administrator or the requirement for consultation with private charter operators.'' One east coast transit agency stated ''This provision does not account for those events that are time sensitive in which the public transit agency does not have time to consult with all of the private charter operators in their area, for example, a presidential inauguration.''

Agency Response: This section is now included in the ''Petitions to the Administrator'' section located in

section 604.11. In response to the private charter operators' comments, we note the establishment of a ''Petitions to the Administrator'' docket. Private charter operators are able to view requests through this Web site (*http://www.regulations.gov*, FTA–2007–0022). We are not offering a public comment period, but if a request egregiously misstates facts, a registered charter operator could contact the Ombudsman for Charter Services (*ombudsman.charterservice@dot.gov*) to raise specific concerns.

In addition, in response to the public transit agencies comments, for events in the planning process, any service provided by a public transit agency after the effective date of this rule must conform to the requirements of the rule, including the requirement for the recipient to exhaust all available vehicles of registered charter providers. In other words, if the event will occur after the effective date of this rule and the public transit agency intends to provide service to that event, then the service must meet the special events requirements contained in section 604.11. If the event occurs before the effective date of this rule, then the requirements of the rule do not apply.

We have also added a requirement that the request for this exception include the date of the event. We added this requirement to make it clear that the approval, if granted, would be for a one time event only.

Section 604.11—When No Registered Charter Provider Responds to Notice From a Recipient

This section sets out the requirements for public transit agencies when no registered charter provider responds to a notice requesting charter service.

Public transit agencies submitted a variety of comments on this provision. Some disagreed with the proposed time frames included in the regulation. Others complained that providing notice was essentially providing free advertising/dispatch services to registered charter providers. Still others requested that FTA consider modifying the proposed language to allow a public transit agency to provide the service in the event that the registered charter provider and customer are unable to agree upon terms.

Private charter operators agreed with the provisions of this section and noted that ''many recipients confuse the public by inasmuch as they [sic] advertise charter service to the degree consumers may not discern between a transit agency and a private provider. This often has the effect of artificially creating 'demand' and allowing transit agencies to inject their tax subsidized pricing in the private market equation, thereby indirectly stifling operating margins.'' This comment went on to state ''the proposed rule further establishes the 'first option' to offer charter service inasmuch [sic] that recipients are not required to notify registered charter parties of all inquiries regarding charter bus service.''

Agency Response: We recognize the need to clarify that public transit agencies are not required to provide notice to registered charter providers of all requests for charter service. Notice is only given for those requests that do not fit within one of the exceptions and for which the public transit agency is still interested in providing that service. Only in this instance is a public transit agency required to provide notice to the list of registered charter providers in its geographic service area. Other than that, the private charter comments are correct that a public transit agency cannot provide the requested charter service if a registered charter provider responds affirmatively to the notice provided. This is true even if the customer and the registered charter provider are not able to agree upon a price.

We added language to this section clarifying that upon receipt of a request for charter service that does not fit within one of the exceptions outlined in subpart B, and the recipient is interested in providing the charter service, the recipient shall provide notice to registered charter providers in the recipient's geographic service area. Further, due to the fact that we have moved the hardship and special events exceptions, this provision is renumbered as section 604.9.

Section 604.12—Agreement With Registered Charter Providers

This section allows a public transit agency to provide charter service in its geographic service area if it obtains an agreement from all of the registered charter providers in the geographic service area.

Private charter operators recognized that this exception is a continuation of an existing exception, but objected to the provision because ''the rule as proposed places an unfair and unintended restriction and subjects taxpayer subsidized competition on new registered charter parties. It is our assertion that on the date new private charter operators register, existing agreements will no longer permit recipients to continue under those agreements until an agreement may be obtained from all registered charter parties.'' The comment goes on to propose that an agreement can be fulfilled if a contractual obligation is completed no later than thirty days from the date a newly registered charter provider becomes registered. Further, this comment goes on to state that the charter service agreement should be a fluid document that represents a meeting of the minds.

Public transit agencies submitted comments opposing the timeframes of January 30th of each year and February 15th of each year.

Agency Response: This language represents CBNRAC consensus language developed by the private charter caucus. Since both private charter operators and public transit agencies oppose the January 30th and February 15th timeframes, we modified the regulatory text to indicate that a recipient has 90 days to enter into an agreement with a newly registered charter provider after an initial agreement with previously registered providers. If no agreement is reached, the recipient may not provide charter service under this exception. Further, a registered charter provider may cancel the agreement at any time after providing the recipient a 90-day notice. In addition, because of other changes to this subpart, this provision has been renumbered to section 604.10.

Section 604.13—Administrator's Discretion

This new section is designed to provide the Federal Transit Administrator with the discretion to allow public transit agencies to provide charter service in certain extraordinary situations.

We did not receive comments from public transit agencies on this new exception, but we did hear from private charter operators who are opposed to the exception. Specifically, they believe this exception ''may serve as an impediment to the private sector filling the needs, while ultimately creating an unwarranted entitlement.'' They base this belief on the fact that the examples provided of the funerals of Presidents Reagan and Ford required advanced planning for those events and the private sector could have been involved if the public transit agency had contacted the private sector. Furthermore, the private charter operator coalition noted that this exception is ''a solution in search of a problem'' because there is no reason private charter operators couldn't receive notice of the request for service and provide buses for these kinds of events should they arise unexpectedly.

Agency Response: This section is now called the ''Petitions to the Administrator'' exception and is located at section 604.11. The new section

contains not only requests for discretionary exceptions to the charter service regulations, but also the hardship and events of regional or national significance, which were both discussed earlier in this preamble.

The basis for the discretionary exception is to provide the Administrator with discretion to respond to extraordinary circumstances—those events where there is no time for prior planning. While some preparations may be made in anticipation, we believe the actual day of the event would not be known in advance and the capability of a particular city to handle the event would likewise not be known in advance. We intend to allow this exception only under extraordinary circumstances. Private charter operators may track these requests and FTA's responses through the Petitions to the Administrator docket (*http://www.regulations.gov*; FTA–2007–0022).

In addition, we added a requirement to identify the date of the event because we want to make absolutely clear that the approval is only for the date specified in the request.

Section 604.12—Reporting Requirements for All Exceptions

This section set out the reporting requirements for public transit agencies that provide charter service pursuant to an exception. We proposed quarterly electronic reporting of standard information regarding charter service trips.

Private charter operators supported this provision as providing the type of transparency necessary to ensure that public transit agencies are not providing unauthorized charter service. While some raised concern about the ability to omit origination and destination for safety and security reasons, if the reason is recorded, then most thought this exception would be acceptable. In addition, we heard from one association that encouraged us to increase the time period from three years to six years for maintaining the records electronically. To support this request, they point to the fact that our definition of pattern of violations examines the past six years and to maintain records less than six years would be inconsistent with this provision.

Public transit agencies opposed this provision because they believe it to be too onerous. In addition, one commenter suggested that the reporting provisions be consolidated so that the same information in the same format is submitted. Other comments submitted requested that the public Web site for storing the reports be replaced with a local Web site for the agency or with records kept at the transit agency's place of business, which would be publicly available. One public transit agency stated it this way: ''Only basic information should be reported under the exceptions. If the reporting is made too onerous, grantees will have to charge the administrative cost to the human service or government entity. For the other exceptions, that information is reported through other mechanisms and this additional reporting is unnecessary.'' Others recommended maintaining the records in a single charter log. A Midwestern state department of transportation stated: ''We recommend that the charter logs required by 604.7(a)(3), 604.8(d), 604.9(b), 604.10(b) and 604.12(c) be consolidated into a single charter log. The information that must be maintained according to the regulations can be categorized and tracked in a spreadsheet or database.''

Agency Response: The purpose of the public Web site is to ensure that all reports are easily available to members of the public, in particular, private charter operators. Maintaining these records at the transit agency does not allow for 24-hour availability. We also believe that all of the information can be consolidated into one log. With the exception of the special events and leasing exceptions, the information required is the same. Thus, a single Word document or Excel spread sheet could serve as a recipient's quarterly report.

In addition, by limiting the applicability of this regulation—excluding recipients of section 5311 funds when providing charter service for program purposes serving the elderly, persons with disabilities, or persons with low income—we have substantially reduced the reporting burden on rural and non-urbanized areas for most of the service they operate.

Furthermore, we decline to extend the reporting period to six years. We believe the private charter operators are confusing complaints with reports. When we examine six years of the recipient's compliance history we are looking at complaints filed. Since FTA maintains the Charter Registration Web site, we will have access to quarterly reports for purposes of reviewing a recipient's compliance history. The regulatory requirement simply applies to a grantee's retention of its quarterly reports, not FTA's retention of quarterly reports.

Subpart C—Procedures for Registration and Notification

Section 604.13—Registration of Private Charter Operators

This section sets out the required information a private charter provider must submit in order to be considered a registered charter provider.

We received comments from public transit agencies urging us to limit where a private charter operator can register. Specifically, one representative comment stated that it trusts ''FTA will be vigilant and act quickly to correct abuses by removing private operators that act in bad faith * * * but such a process will not address the scenario in which a registered private operator who cannot in actuality provide service responds to a recipient's notice.''

Agency Response: Private charter operators may register with FTA at *http://www.fta.dot.gov/laws/leg_reg_179.html*. We also believe that a private charter operator should be able to register in any geographic service area. This means that a company could register with all public transit agencies across the United States. We believe that since this rule affords protections to registered charter providers, the threat of losing that registration will be deterrent enough for private charter operators to act in a commercially reasonable manner and in good faith when negotiating with a customer sent to them by the public transit agency. Removal from the Charter Registration Web site carries with it a three year period of receiving no notice from public transit agencies. This is no small consequence and, therefore, it will protect public transit agencies from ''vindictive'' private charter operators. Further, as noted in the history section of this document, our findings as well as GAO's findings have not found an ''unmet need'' with respect to the provision of charter services. Thus, we believe that this provision is protective of those situations in which a private charter operator is acting in a vindictive manner.

In addition, the Web site is designed to allow quick and efficient removal of a private charter operator once a decision has been made that satisfies the requirements of section 604.26, ''Removal.'' We have, therefore, adopted as final the proposed language.

Section 604.14—Recipient's Notification to Registered Charter Providers

This section requires public transit agencies to provide notice to registered charter providers when the public transit agency is interested in providing the requested charter service.

We heard from public transit agencies and a public transit association indicating that a clarification is necessary in this section. Specifically, according to the association, ''as drafted, section 604.14(b) would require pre-notification to private charter providers upon receiving a request for service under any exception. We believe this is a drafting error since it is inconsistent with the language immediately proceeding in section 604.14(a) and our understanding of the intent of the negotiators.'' In addition, the association raised a concern regarding when an e-mail is returned ''undeliverable.'' A transit agency stated ''the regulations require that the transit agency provide notice of a request for service by the close of business if the request is received before 2 p.m. that day, or the next business day if received after 2 p.m. This short time does not allow the public transit provider to evaluate the request and make sure that all the information is complete, before notifying the registered private charter companies.'' One Midwestern transit agency commented that ''the Web site will greatly reduce the private operator's financial risk. They will no longer need to market, advertise, or promote their business. Every morning they can just log on to FTA's version of 'Make Me a Millionaire' Web site to see what contracts they can bid.''

Agency Response: We believe the language as proposed is clear that only requests for charter service that do not fit within one of the exceptions require notification to registered charter providers. In other words, the notification procedures apply in the event one of the exceptions does not. Even so, we decided to add a clarification to indicate that upon receipt of a request for charter service that does not fit within one of the exceptions in subpart B, a recipient interested in providing the charter service shall provide notice to registered charter providers registered in its geographic service area.

Further, we are not convinced that the time period provided does not give public transit agency enough time to decide whether it is interested in providing the requested charter service. The time frames included in this particular provision were developed by the CBNRAC, which included small, medium, and large public transit agencies. Therefore, we retain that provision and adopt it as final.

In addition, we agree with the transportation association that a clarification should be added to the regulatory text to take into account when an e-mail is returned as ''undeliverable.'' In those instances, we have required a public transit agency to also send notification of the requested charter service by facsimile. In that instance, the public transit agencies must maintain a record of the ''undeliverable'' e-mail notification and confirmation that a facsimile was sent to the number provided by the registered charter provider.

Subpart D—Registration of Qualified Human Service Organizations and Duties for Recipients Regarding Charter Registration Web Site

Section 604.15—Registration of Qualified Human Service Organizations

This section set forth the registration requirements for qualified human service organizations (QHSO). Besides the basic information of organization name, address, and telephone, etc., the requirements also include basic financial information and a certification that funding received from a state or local program includes funding for transportation.

We heard from several public transit agencies regarding these registration requirements. Most opposed the requirement to certify that state or local funds include funds for transportation. One transportation association stated ''it is the lack or dearth of transportation funding that keeps these social service agencies from contracting with private charter providers.'' This association requests that the requirement be eliminated from the rule because ''the rule's new complaint and appeals process is sufficient to ensure that non-deserving organizations do not receive service.''

Regarding the requirement to certify funds for transportation, one transportation authority noted that ''many agencies may not know the terms of the original federal grant and social service agencies that are funded for transportation would not necessarily need the free or reduced cost services this system is intended to facilitate.'' Another transit agency stated: ''[the requirement presents a problem] since most federal funds are passed through one or more levels of state and local government with no indication of the original purposes. Social services organizations that are funded for transportation would not necessarily need the free or reduced cost services this system is intended to facilitate.''

From the private charter operator side, we received comments from an association urging us to ''place the burden of qualification on the recipient and make clear that a failure to qualify an organization will result in a finding of violation and enforcement action.''

Agency Response: We find the arguments from the public transit agencies regarding QHSO funding to be persuasive. Furthermore, the emphasis on human service transportation coordination planning requires us to be mindful of any impediments to accomplishing that goal. As such, we are modifying the proposed language to remove the requirement that a QHSO certify that state and local funds include funding for transportation.

We also added a clarification in the final rule that a QHSO is required to provide certain information and demonstrate that it is qualified. Public transit agencies should ensure that the QHSO has a valid registration in the FTA Charter Registration Web site that was provided at least sixty days in advance of the requested service before providing charter services to that organization.

Finally, we added a clarification in the final rule that a QHSO, as part of its registration, must explain what types of future requests for charter service it may request from a recipient and how those charter service trips are related to the QHSO's mission.

Section 604.16—Duties for Recipients With Respect to Charter Registration Web Site

This section provides minimum requirements for recipients of FTA funds with respect to the Charter Registration Web site.

We received comments from public transit agencies urging us to provide training and a training manual for the new Web site.

Agency Response: We agree with these comments and, have delayed the effective date of the rule in order to give us time to provide the necessary training and distribute an electronic user guide to public transit agencies. We will also encourage transit agencies to use the site before the effective date of the final rule and the Ombudsman for Charter Services will assist transit agencies with any questions or problems they may encounter (*ombudsman.charterservice@dot.gov*).

We have also modified the language of this provision to require a public transit agency to ensure that its employees and contractors affected by this regulation have the competency to effectively use the Web site.

Subpart E—Advisory Opinions

This subpart allows for public transit agencies and private charter operators to request an advisory opinion from the Office of the Chief Counsel at FTA.

We heard from several public transit agencies opposing this provision. A large public transportation association went so far as to challenge whether the CBNRAC reached consensus on this provision. Other public transit agencies said that FTA should ''withdraw the provision on advisory opinions because this means advice will be given on a regional basis which will lead to inconsistencies.'' Another comment stated ''while the intent of the advisory opinions portion of the rule is laudable as a practical matter, our management believes it has the potential to create more problems than it solves so we urge FTA to eliminate it.''

Private charter operators support the advisory opinion provision. Specifically, one southern private charter operator stated ''I commend the committee on the consensus reached in the Advisory Opinion issue. This rule should be invaluable to both the private and the public operator in obtaining a clear opinion from FTA on the appropriateness of a proposed charter movement. If executed timely, this avenue will give a transit operator the opportunity to refrain from providing an illegal charter.''

On the other hand, we also heard from several private charter operates expressing concern over FTA's decision to not include cease and desist provisions in the rule. One private charter operator stated its concern as ''our main disagreement with the FTA proposed rule is the lack of a process by which a complainant may apply to FTA for a cease and desist order to stop a publicly funded transit agency from beginning an illegal charter. Allowing private operators to apply for a cease and desist order prior to the charter would prevent the operator from filing and the transit agency from responding to the full complaint, hearing, and appeals process. FTA's reluctance to propose a cease and desist process stems solely from the agency's estimation of the workload and human capital required to implement it. While we are mindful of the agency's budget constraints we feel that a cease and desist order process need not be, and should not be long and drawn out.''

Another private charter association noted that ''since FTA cannot recoup lost revenues when recipients are found in violation of the Charter Service rules, it is imperative the FTA maintain a cease and desist provision and not to include such a provision is inconsistent with FTA's duty and fails to protect the private charter operator.''

Agency Response: We decline to remove this provision based on the comments received from public transit agencies. The inclusion of an advisory opinion provision allows for a more consistent, organized, and transparent process than the one that currently exists. Further this section was a consensus item during the CBNRAC negotiations, and, therefore, we are reluctant to remove it.

Further, we are also persuaded by the comments from the private charter operators requesting a cease and desist provision. This provision was considered during the CBNRAC negotiations, but no consensus was reached on this point. We rejected the provision in the NPRM because we believed it would be too burdensome. Since then, we have examined our practices, especially with respect to past decisions, and confirmed that we have provided cease and desist orders in the past. Therefore, we have included in the Advisory Opinion section a provision to allow private charter operators the option of requesting a cease and desist order. We have created an Advisory Opinion/Cease and Desist Order docket at *http://www.regulations.gov*; FTA–2007–0023 to keep track of all advisory opinions and cease and desist orders granted or denied.

We have also included a provision to require that registered charter providers seeking a cease and desist order serve a copy of the request on the affected public transit agency by e-mail or facsimile. In addition, the registered charter provider must certify that it telephoned the public transit agency and informed an appropriate official of the submission of the request for cease and desist order in its request for an advisory opinion.

Subpart F—Complaints

Section 604.27—Complaints, Answers, Replies and Other Documents

This section sets out the content requirements for complaints and provides timeframes for the filing of complaints, answers, replies, and rebuttals. This section also allows a complainant to withdraw its complaint at any time.

We received a variety of comments on this section. Generally, most public transit agencies expressed concern over the new, detailed complaint procedures. One southern public transit agency stated ''the complaint process appears to be unwieldy, complicated, and potentially expensive for small operators.'' A southern association of regional councils stated ''the complaint process is overly harsh. As written, private providers can ''tie up'' a public provider with litigation for almost any perceived wrong. Public providers are left to stand alone and incur significant legal fees to defend every complaint.'' This comment also advocated for a process that addresses honest mistakes, is administrative in nature and is free of any need for lawyers. One state representative submitted a comment on behalf of his public transit agency constituents stating the ''NPRM is nine and one half pages and five of the pages address the procedures for filing a complaint that cannot be done without the services of an attorney. The additional administrative requirements will result in significant additional costs—direct and indirect.'' In addition, we heard from public transit agencies that complaints should be filed within a certain time frame. One western transit district suggested ''FTA's jurisdiction over complaints should be limited to complaints that are filed within the earlier of: (a) 90 days after the event giving rise to the complaint or (b) 30 days after the complainant knew or should have known about the event that is the subject of the complaint.''

Private charter operators were supportive of the proposed complaint provisions. A private charter operator stated that the ''FTA charter bus complaint and appeals process required revision in order to achieve consistent and timely decisions. The new process will require additional information on the part of the complainant and should result in complaints with enough information to determine the violation of the charter regulations.''

Agency Response: We disagree with comments that the new complaint process is ''unwieldy and unduly burdensome.'' We are also unconvinced by comments asserting that the new complaint process will be more expensive for public transit agencies. In fact, the new complaint process places a heavier burden on registered charter providers than on recipients. Recipients have no greater burden under the new regulation when it comes to responding to a complaint than they did under the old regulation. In other words, a public transit agency still has the obligation to respond timely to a complaint filed against it, which is exactly the same obligation it had under the old charter service rule. This final rule, however, plainly states the burden on a transit agency when responding to a complaint, the timeframe for responding to a complaint, and provides clearer appeal procedures. All of these improvements were agreed upon by all parties during the CBNRAC negotiations.

Further, the new complaint provision requires a registered charter provider to provide specific factual allegations regarding an alleged charter violation.

Before the public transit agency has to respond to that complaint, FTA looks at the complaint to ensure that it has met all of the regulatory requirements. In the past, the only standard for filing a complaint was that it ''is not without obvious merit,'' which allowed an incomplete complaint to move forward just as easily as a complete complaint, which did tie up public transit agencies unnecessarily. Now, a complaint must be legally sufficient before it moves forward to the transit agency for a response.

On the other hand, we agree with comments submitted that only ''ripe'' complaints should be considered. Thus, we modified the language in the final rule to require that a complaint must be filed within 90 days of the date the alleged unauthorized charter service.

Further, we asked for comment regarding the role of state departments of transportation in the complaint process. We proposed to allow a state department of transportation to make a first attempt to resolve a complaint between a private charter operator and a sub-recipient. We heard from several state transportation departments that did not agree with our proposal. We heard from one state transportation department that did support the idea of allowing a state to attempt to resolve the matter initially.

Private charter operators did not support state involvement in the complaint process. Just like the public transit comments, private charter operators saw state involvement as leading to inconsistent decisions and a lengthier process.

We agree with the majority of comments received and will retain the proposed language in the final rule. The requirement in the final rule would notify a state department of transportation that a complaint has been filed against a sub-recipient. There are no requirements for the state in the complaint process.

Finally, we added a clarification that complaints for removal of registered charter provider or QHSO must be submitted within 90 days of discovering facts that merit removal. This 90-day deadline does not mean, however, that QHSOs that register and then are not challenged within 90 days after registration cannot later be challenged. Rather, when a registered charter provider or recipient finds evidence supporting removal, then the 90-day clock begins.

Subpart H—Decisions by FTA and Appointment of a Presiding Official (PO)

Section 604.34—Decisions by the Chief Counsel and Appointment of a PO

This provision allows FTA to appoint a presiding official (PO) in the event that a hearing is necessary.

Public transit agencies submitted comments expressing concern that the qualifications of a PO were not set out in the proposed rule. Specifically, ''without reasonable criteria, vetted through public comment, the credibility and qualifications of any particular PO will necessarily be the first order of business in any proceeding. Must a PO be neutral and detached? Is FTA Regional Counsel available for assignment as a PO? Other FTA personnel? Is there a means of challenging a PO for cause, bias, or prejudice?''

Conversely, private charter operators support this provision and ''presume that such officials will have no predisposed transit affiliation and have proper training and experience that will instill confidence in the complaint process.''

Agency Response: We believe anyone appointed to serve in the PO capacity would stand in the shoes of FTA, and therefore, it is within FTA's discretion to appoint an appropriate person to serve as a PO. This internal decision is not subject to notice and comment. Even so, we note that a PO will be appointed only in those rare cases where a complaint warrants a hearing. A PO will not review initial complaints. That function will be performed by the Office of Chief Counsel in headquarters. In the event that a PO is appointed to conduct a hearing, the PO's recommended decision will have to be adopted by the Chief Counsel's Office.

To address the comments received, we modified the language with respect to a PO to indicate that a PO will be appointed for hearing purposes only, and, regarding qualifications, we have added language that the official or agency representative appointed to preside as a PO shall be a person who has had no previous contact with the parties concerning the issue in the proceeding.

Section 604.35—Separation of functions

This section requires that FTA personnel involved in proceedings under this subpart must not be involved with other matters relating to the same case.

Public transit agencies raised a concern that ''could one FTA attorney prosecute a complaint before another FTA attorney? The internal inconsistency appears based on the iterative nature of the drafting process. Both sections of the rule clearly place responsibility for prosecution of any complaint on the complainant.'' In addition, several transit agencies asked the question of who bears the costs of litigation before a PO: ''FTA has created a substantial quasi-judicial forum and process that will almost certainly be expensive to comply with. Who will be responsible for litigation costs?''

Agency Response: Addressing the last comment first, as with all litigation, and as is the case under the old charter service regulation, the parties each bear its litigation costs. As noted earlier, FTA will appoint a PO. In addition, FTA will provide a suitable location to hold a hearing and hire a court reporter to transcribe the proceedings. As in most cases, a transcript becomes a matter of public record, and, therefore, would be available to all parties after the proceeding. If a party wishes to expedite transcription, then that party would bear the additional expense of an expedited transcript.

While these new hearing procedures may appear ''substantial'' in comparison to the existing hearing procedures, which are nonexistent, the procedures set out in the new rule set out a basic framework for conducting a hearing. The new provisions cover all of the basics of a hearing in the rare event that one is necessary.

Section 604.41—Standard of Proof

This section sets out the standard of proof that must be met during a hearing and before a PO can rule in favor of a party.

An east coast transit agency recommended that the standard of proof should not be ''substantial evidence'' rather it should be ''a preponderance of the reliable and probative evidence contained in the record and is in accordance with the law.''

Agency Response: After considering the comments received on this point, we agree that a preponderance of the evidence standard is more consistent with other administrative proceedings. We have amended this section accordingly.

Section 604.42—Burden of Proof

This section sets out the burden of proof in a hearing asserting noncompliance with this Part.

A transportation association submitted a comment that this section does not give an ''indication of what affirmative defense might be available in the complaint process. FTA must clarify when it feels a complainant no longer

carries the burden of proof in its administrative proceedings.''

Agency Response: In response to this comment, we have set out the burden of proof for a complaint as: ''A complainant must show by a preponderance of the evidence that a recipient provided charter service, as defined in this Part, and that such service did not fall within one of the exemptions or exceptions contained in this Part.'' If the complainant meets this burden, then the burden shifts to the recipient to demonstrate, by a preponderance of the evidence, that the service provided was authorized under the charter service regulations. Providing this burden shifting clarification should address the commentor's concern and, therefore, we have removed the affirmative defenses subparagraph.

Section 604.47—Remedies

This section set out the remedies that FTA may pursue if a recipient is found in noncompliance with this Part.

We heard from public transit agencies on a variety of issues regarding this section. First, some recipients asserted that FTA has no statutory authority to order a recipient to refund funds to the U.S. Treasury. Another argument is that FTA can only withhold a portion of funds if a pattern of violations is found. Further, others stated that remedies should only be ordered for violations of the same provisions and not dissimilar provisions. A private charter operator pointed out that ''shall mitigate the remedy'' should be ''may mitigate the remedy.'' Another comment submitted requested that FTA include a provision indicating where the funds will go. Others urged FTA to be reasonable in assessing remedies because any withdrawal of funds from a public transit agency will mean a lessening of public transit services. Another comment submitted requested that FTA provide a range of remedies so as to provide public transit agencies with an idea of how a violation of this Part will result in a certain amount of withheld funds.

Agency Response: We agree with the comment stating that we could not order a recipient to refund funds to the Treasury. Therefore, we have removed this as a potential remedy. Also in response to comments received from public transit agencies, we added the fact that FTA may pursue as a remedy the suspension and/or debarment of a recipient, its employees and contractors, for a violation of the charter service regulation.

Further, we believe that we do have the authority to withhold funds for a single violation of this Part. Comments on this topic do not take into account the statutory provision on remedies. Specifically, the statute provides: ''If the Secretary decides that a violation has occurred, the Secretary shall correct the violation under terms of the agreement.'' 49 U.S.C. 5323((d)(2)(B). The agreement referenced in the statute is the Master Agreement and the terms and conditions that all recipients agree to in order to receive financial assistance from FTA. (See Master Agreement, Section 11—Right of Federal Government to Terminate: ''Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement * * *.'') Thus, under the terms of the agreement, FTA can withhold financial assistance for a single violation of the charter service regulations. We view the new statutory provision as direction from Congress that Federal financial assistance must be withheld if a pattern of violations is found. In contrast, previously under the Master Agreement, FTA had the discretion to determine whether to withhold Federal financial assistance for a pattern of violations. Now the Master Agreement reflects the new statutory provision regarding ''Additional Remedies,'' which states FTA ''shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate if the Secretary finds a pattern of violation of the agreement.'' 49 U.S.C. 5323(d)(2)C). We view the ''Additional Remedies'' section of SAFETEA–LU to mean that this remedy is in addition to the remedies specified in the Master Agreement. We therefore adopt these remedies as proposed.

In response to the concern that the violations must be similar in nature in order to constitute a pattern of violations, we believe this concern has merit. It is FTA's intention to view paperwork violations differently from service violations. Thus, we have clarified in the final rule that only unauthorized service violations can be counted toward a pattern of violations. In determining the remedy to be applied, however, we will consider whether the violation is service, paperwork, or reporting.

We also believe that the examination period of six years is appropriate to determine a pattern or practice. For urbanized area recipients, FTA conducts triennial reviews of compliance with FTA requirements. The six year period allows FTA to look at findings in two consecutive compliance reviews. The six year period will provide a true picture as to whether a public transit agency consistently violates the charter service regulations. Moreover, we know that a vast majority of transit agencies diligently comply with the charter service regulations. So, we doubt there will be many cases in which this provision will come into play.

We also want to respond to the private charter companies' concern that a single complaint could establish a pattern of violations. We believe that a single instance of unauthorized charter service cannot establish a pattern of violations. If a public transit agency provides unauthorized charter service for the flower show, then that is one instance of unauthorized charter service even though the flower show lasts for one week. In other words, multiple days of unauthorized charter service for a single event does not establish a pattern or practice of violating the charter service regulations. A complaint may, however, include several distinct instances of potential charter violations. In that case, the several distinct violations mentioned in the single complaint could form a basis for a finding of a pattern.

That being said, with the addition of a cease and desist provision to the final rule, registered charter providers can protect their interests in advance of an event. In addition, we will consider the issuance of a cease and desist order as an aggravating factor—if the recipient ignores the order and provides the service despite the issuance of a cease and desist order—in determining the amount of remedy to apply.

Public transit agencies also wanted to know where the withheld funds will go if FTA finds a violation of the charter service regulations. If FTA finds a violation of the charter service regulations, FTA will make every effort to ensure that the funds may be used by other recipients for transit services. For example, in instances where there are multiple recipients in a large urbanized area, FTA could withhold funds from the violating transit agency, while still allowing the funds to flow to other transit providers in the same urbanized area to which the funds were apportioned. For funds apportioned to the State for small urbanized areas, FTA could penalize one recipient while still allowing the Governor to allocate the funds to other urbanized areas in the State. Similarly, if a rural transit system were penalized for violations of the charter rule, the State could allocate the funds to other rural transit systems. In

an instance where the violator was the only eligible recipient, formula funds would ultimately lapse and be reallocated in a subsequent apportionment among all areas. Funds de-obligated from a grant, as a penalty, after their lapse date, would be similarly reapportioned.

Finally, we agree with the comments requesting notice of the range of penalties that may be applied for a violation. We have created a new Appendix D that contains a matrix of a range of potential remedies. While each case is fact specific and FTA will decide what remedy to apply on a case-by-case basis, this matrix provides guidance to recipients as to what FTA may withhold.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking is not a significant regulatory action within the meaning of Executive Order 12866, and, therefore, this rulemaking was not reviewed by the Office of Management and Budget. Further, this rule is not significant under Department of Transportation regulatory policies and procedures. This final rule contains revisions that are clarifying in nature. Where possible, we have adopted provisions to lessen the burden on public transit agencies while ensuring that those entities do not engage in unfair competition with private charter operators.

This rule is not anticipated to adversely affect, in a material way, any sector of the economy. This rulemaking clarifies and sets forth provisions to protect private charter operators from unfair competition by public transit agencies; the changes should increase opportunities for private charter operators when the requested service is not subject to one of the community-based exceptions. Likewise, we have adopted provisions to be the least burdensome on small transit agencies—many of these agencies are now exempted from the rule's reporting requirements when they provide charter services in accordance with program purposes, as defined in the regulation, under 49 U.S.C. 5310, 5311, 5316, and 5317. In addition, this proposed rule would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

FTA estimates the costs associated with this rule to be minimal. This rule simply clarifies existing procedures and sets out more efficient procedures for reporting, registration, and notification. The only costs we have identified for this rulemaking are the training costs to familiarize employees with the FTA Charter Registration Web site so that they can properly find the registered charter providers in their geographic service areas. Even so, FTA will provide training manuals for a recipient's use, which should further minimize a recipient's training costs.

Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis,'' which will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The nature of this rulemaking is to prevent unfair competition by public transit agencies with private charter operators. We have added provisions that are also supportive of small governmental entities. Thus, any economic impact on small entities will be a positive one. FTA hereby certifies that the final rule for the charter service regulation will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This final rule will not result in the expenditure of non-Federal funds by State, local, and Tribal governments, in the aggregate, or by the private sector, of $120.7 million in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FTA has determined that the final rule would not have sufficient federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this final rule would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations.

FTA has an existing approved information collection (OMB Control Number 2132–0543) that expires on January 31, 2008. FTA has determined that the revisions in this final rule will require an update to the information collection request. However, FTA believes there will be a decrease in burden hours per submission because of the use of electronic technology.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the final rule does not have substantial direct effects on one or more Indian Tribes; does not impose substantial direct compliance costs on Indian Tribal governments; and does not preempt Tribal laws. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' dated May 18, 2001. We have determined that this final rule is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Distribution Tables

For ease of reference, we provide a distribution table to indicate changes in section numbering and titles.

SECTION TITLE AND NUMBER

Old section (Subpart A)		New section (Subpart A)	
Purpose	§ 604.1	Purpose	§ 604.1

SECTION TITLE AND NUMBER—Continued

Old section (Subpart A)		New section (Subpart A)	
Applicability	§ 604.3	Applicability	§ 604.2
Definitions	§ 604.5	Definitions	§ 604.3
Charter Agreement	§ 604.7	Charter Agreement	§ 604.4
Charter Service	§ 604.9	Exceptions	(Subpart B)
	§ 604.9(a)		§ 604.9
	§ 604.9(b)(1)		removed
	§ 604.9(b)(2)		§ 604.8
	§ 604.9(b)(3)		§ 604.11
	§ 604.9(b)(4)		§ 604.11
	§ 604.9(b)(5)		§ 604.7
	§ 604.9(b)(6)		removed
	§ 604.9(b)(7)		§ 604.10
	§ 604.9(b)(8)		removed
Procedures for determining if there are any willing and able private charter operators.	§ 604.11		(Subpart C)
		Registration of private charter operators	§ 604.16
Reviewing evidence submitted by private charter operators.	§ 604.13		removed
		Procedures for Registration of Qualified Human Services Organizations and Duties for Recipients Regarding Charter Registration Web site.	(Subpart D)
		Advisory Opinions and Cease and Desist Orders	(Subpart E)
Filing a complaint	(Subpart B)	Complaints	(Subpart F)
	§ 604.15(a)		§ 604.27(a)
	§ 604.15(b)		removed
	§ 604.15(c)		§ 604.27(b)
	§ 604.15(d)		§ 604.27(c)
	§ 604.15(e)		§ 604.34 or 46
	§ 604.15(f)		§ 604.32 or 33
		Investigations	(Subpart G)
		FTA Initial Decisions and Referrals to a Presiding Official (PO).	(Subpart H)
	§ 604.15(g)		(Subpart I)
			§ 604.36
	§ 604.15(h)		§ 604.37
	§ 604.15(i)		§ 604.45
Remedies	§ 604.17	Remedies	§ 604.47
		Appeal to Administrator and final agency orders	(Subpart J)
Appeals	§ 604.19(a)		§ 604.48(a)
	§ 604.19(b)		§ 604.48(b)
	§ 604.19(c)		§ 604.48(c)
	§ 604.19(d)		§ 604.48(a)
	§ 604.19(e)		§ 604.48(b)
Judicial Review	§ 604.21		(Subpart K)
			§ 604.50

List of Subjects in 49 CFR Part 604

Administrative practice and procedure, Charter service, Mass transportation.

■ In consideration of the foregoing, FTA amends chapter VI of title 49 of the Code of Federal Regulations as set forth below:

Title 49—Transportation

■ 1. Revise part 604 to read as follows:

PART 604—CHARTER SERVICE

Subpart A—General Provisions

Sec.
604.1 Purpose.
604.2 Applicability.
604.3 Definitions.
604.4 Charter service agreement.

Subpart B—Exceptions

604.5 Purpose.
604.6 Government officials on official government business.
604.7 Qualified human service organizations.
604.8 Leasing FTA funded equipment and drivers.
604.9 When no registered charter provider responds to notice from a recipient.
604.10 Agreement with registered charter providers.
604.11 Petitions to the administrator.
604.12 Reporting requirements for all exceptions.

Subpart C—Procedures for Registration and Notification

604.13 Registration of private charter operators.
604.14 Recipient's notification to registered charter providers.

Subpart D—Registration of Qualified Human Service Organizations and Duties for Recipients With Respect to Charter Registration Web Site

604.15 Registration of qualified human services organizations.
604.16 Duties for recipients with respect to Charter Registration Web site.

Subpart E—Advisor Opinions and Cease and Desist Orders

604.17 Purpose.
604.18 Request for an advisory opinion.
604.19 Processing of advisory opinions.
604.20 Effect of an advisory opinion.
604.21 Special considerations for advisory opinions.
604.22 Request for a cease and desist order.
604.23 Effect of a cease and desist order.
604.24 Decisions by the Chief Counsel regarding cease and desist orders.

Subpart F—Complaints

604.25 Purpose.
604.26 Complaints and decisions regarding removal of private charter operators or qualified human service organizations from registration list.
604.27 Complaints, answers, replies, and other documents.
604.28 Dismissals.
604.29 Incomplete complaints.
604.30 Filing complaints.
604.31 Service.

Subpart G—Investigations

604.32 Investigation of complaint.
604.33 Agency initiation of investigation.

Subpart H—Decisions by FTA and Appointment of a Presiding Official (PO)

604.34 Chief Counsel decisions and appointment of a PO.
604.35 Separation of functions.

Subpart I—Hearings

604.36 Powers of a PO.
604.37 Appearances, parties, and rights of parties.
604.38 Discovery.
604.39 Deposition.
604.40 Public disclosure of evidence.
604.41 Standard of proof.
604.42 Burden of proof.
604.43 Offer of proof.
604.44 Record.
604.45 Waiver of procedures.
604.46 Recommended decision by a PO.
604.47 Remedies.

Subpart J—Appeal to Administrator and Final Agency Orders

604.48 Appeal from Chief Counsel decision.
604.49 Administrator's discretionary review of the Chief Counsel's decision.

Subpart K—Judicial Review

604.50 Judicial review of a final decision and order.
Appendix A to Part 604 —Listing of Human Service Federal Financial Assistance Programs
Appendix B to Part 604—Basis for Removal From Charter Registration Web site
Appendix C to Part 604—Charter Service Questions and Answers
Appendix D to Part 604—Matrix of Remedies for Violations

Subpart A—General provisions.

§ 604.1 Purpose.

(a) The purpose of this part is to implement 49 U.S.C. 5323(d), which protects private charter operators from unauthorized competition from recipients of Federal financial assistance under the Federal Transit Laws.

(b) This subpart specifies which entities shall comply with the charter service regulations; defines terms used in this part; explains procedures for an exemption from this part; and sets out the contents of a charter service agreement.

§ 604.2 Applicability.

(a) The requirements of this part shall apply to recipients of Federal financial assistance under the Federal Transit Laws, except as otherwise provided in paragraphs (b) through (g) of this section.

(b) The requirements of this part shall not apply to a recipient transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review.

(c) The requirements of this part shall not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under section 3038 of the Transportation Equity Act for the 21st Century, as amended, or to the non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under any of the following programs: 49 U.S.C. 5307, 49 U.S.C. 5309, 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

(d) The requirements of this part shall not apply to a recipient transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, for emergency preparedness planning and operations.

(e) The requirements of this part shall not apply to a recipient that uses Federal financial assistance from FTA, for program purposes only, under 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

(f) The requirements of this part shall not apply to a recipient, for actions directly responding to an emergency declared by the President, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration. If the emergency lasts more than 45 days, the recipient shall follow the procedures set out in subpart D of 49 CFR 601.

(g) The requirements of this part shall not apply to a recipient in a non-urbanized area transporting its employees, other transit system employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

§ 604.3 Definitions.

All terms defined in 49 U.S.C. 5301 *et seq.* are used in their statutory meaning in this part. Other terms used in this part are defined as follows:

(a) *''Federal Transit Laws''* means 49 U.S.C. 5301 *et seq.*, and includes 23 U.S.C. 103(e)(4), 142(a), and 142(c), when used to provide assistance to public transit agencies for purchasing buses and vans.

(b) *''Administrator''* means the Administrator of the Federal Transit Administration or his or her designee.

(c) *''Charter service''* means, but does not include demand response service to individuals:

(1) Transportation provided by a recipient at the request of a third party for the exclusive use of a bus or van for a negotiated price. The following features may be characteristic of charter service:

(i) A third party pays the transit provider a negotiated price for the group;

(ii) Any fares charged to individual members of the group are collected by a third party;

(iii) The service is not part of the transit provider's regularly scheduled service, or is offered for a limited period of time; or

(iv) A third party determines the origin and destination of the trip as well as scheduling; or

(2) Transportation provided by a recipient to the public for events or functions that occur on an irregular basis or for a limited duration and:

(i) A premium fare is charged that is greater than the usual or customary fixed route fare; or

(ii) The service is paid for in whole or in part by a third party.

(d) *''Charter service hours''* means total hours operated by buses or vans while in charter service including:

(1) Hours operated while carrying passengers for hire, plus

(2) Associated deadhead hours.

(e) *''Chief Counsel''* means the Chief Counsel of FTA and his or her designated employees.

(f) *''Days''* means calendar days. The last day of a time period is included in the computation of time unless the last day is a Saturday, Sunday, or legal holiday, in which case, the time period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(g) *''Demand response''* means any non-fixed route system of transporting individuals that requires advanced scheduling by the customer, including services provided by public entities, nonprofits, and private providers.

(h) *''Exclusive''* means service that a reasonable person would conclude is intended to exclude members of the public.

(i) *''FTA''* means the Federal Transit Administration.

(j) *''Geographic service area''* means the entire area in which a recipient is authorized to provide public transportation service under appropriate local, state, and Federal law.

(k) *''Government official''* means an individual elected or appointed at the local, state, or Federal level.

(l) *''Interested party''* means an individual, partnership, corporation, association, or other organization that has a financial interest that is affected by the actions of a recipient providing charter service under the Federal Transit Laws. This term includes states, counties, cities, and their subdivisions, and tribal nations.

(m) *''Pattern of violations''* means more than one finding of unauthorized charter service under this part by FTA beginning with the most recent finding of unauthorized charter service and looking back over a period not to exceed 72 months.

(n) *''Presiding Official''* means an official or agency representative who conducts a hearing at the request of the Chief Counsel and who has had no previous contact with the parties concerning the issue in the proceeding.

(o) *''Program purposes''* means transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities, and or low income individuals); this does not include exclusive service for other groups formed for purposes unrelated to the special needs of the targeted populations identified herein.

(p) *''Public transportation''* has the meaning set forth in 49 U.S.C. 5302(a)(10).

(q) *''Qualified human service organization''* means an organization that serves persons who qualify for human service or transportation-related programs or services due to disability, income, or advanced age. This term is used consistent with the President's Executive Order on Human Service Transportation Coordination (February 24, 2004).

(r) *''Recipient''* means an agency or entity that receives Federal financial assistance, either directly or indirectly, including subrecipients, under the Federal Transit Laws. This term does not include third-party contractors who use non-FTA funded vehicles.

(s) *''Registered charter provider''* means a private charter operator that wants to receive notice of charter service requests directed to recipients and has registered on FTA's charter registration Web site.

(t) *''Registration list''* means the current list of registered charter providers and qualified human service organizations maintained on FTA's charter registration Web site.

(u) *''Special transportation''* means demand response or paratransit service that is regular and continuous and is a type of ''public transportation.''

(v) *''Violation''* means a finding by FTA of a failure to comply with one of the requirements of this Part.

§ 604.4 Charter service agreement.

(a) A recipient seeking Federal assistance under the Federal Transit Laws to acquire or operate any public transportation equipment or facilities shall enter into a ''Charter Service Agreement'' as set out in paragraph (b) of this section.

(b) A recipient shall enter into a Charter Service Agreement if it receives Federal funds for equipment or facilities under the Federal Transit Laws. The terms of the Charter Service Agreement are as follows: ''The recipient agrees that it, and each of its subrecipients, and third party contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 CFR 604, the terms and conditions of which are incorporated herein by reference.''

(c) The Charter Service Agreement is contained in the Certifications and Assurances published annually by FTA for applicants for Federal financial assistance. Once a recipient receives Federal funds, the Certifications and Assurances become part of its Grant Agreement or Cooperative Agreement for Federal financial assistance.

Subpart B—Exceptions

§ 604.5 Purpose.

The purpose of this subpart is to identify the limited exceptions under which recipients may provide community-based charter services.

§ 604.6 Government officials on official government business.

(a) A recipient may provide charter service to government officials (Federal, State, and local) for official government business, which can include non-transit related purposes, if the recipient:

(1) Provides the service in its geographic service area;

(2) Does not generate revenue from the charter service, except as required by law; and

(3) After providing such service, records the following:

(i) The government organization's name, address, phone number, and e-mail address;

(ii) The date and time of service;

(iii) The number of passengers (specifically noting the number of government officials on the trip);

(iv) The origin, destination, and trip length (miles and hours);

(v) The fee collected, if any; and

(vi) The vehicle number for the vehicle used to provide the service.

(b) A recipient that provides charter service under this section shall be limited annually to 80 charter service hours for providing trips to government officials for official government business.

(c) A recipient may petition the Administrator for additional charter service hours only if the petition contains the following information:

(1) Date and description of the official government event and the number of charter service hours requested;

(2) Explanation of why registered charter providers in the geographic service area cannot perform the service (e.g., equipment, time constraints, or other extenuating circumstances); and

(3) Evidence that the recipient has sent the request for additional hours to registered charter providers in its geographic service area.

(d) FTA shall post the request for additional charter service hours under this exception in the Government Officials Exception docket, docket number FTA–2007–0020 at *http://www.regulations.gov*. Interested parties may review the contents of this docket and bring questions or concerns to the attention of the Ombudsman for Charter Services. The written decision of the Administrator regarding the request for additional charter service hours shall be posted in the Government Officials Exception docket and sent to the recipient.

§ 604.7 Qualified human service organizations.

(a) A recipient may provide charter service to a qualified human service organization (QHSO) for the purpose of serving persons:

(1) With mobility limitations related to advanced age;

(2) With disabilities; or

(3) With low income.

(b) If an organization serving persons described in paragraph (a) of this section receives funding, directly or indirectly, from the programs listed in Appendix A of this part, the QHSO shall not be required to register on the FTA charter registration Web site.

(c) If a QHSO serving persons described in paragraph (a) of this

section does not receive funding from any of the programs listed in Appendix A of this part, the QHSO shall register on the FTA charter registration Web site in accordance with § 604.15.

(d) A recipient providing charter service under this exception, whether or not the QHSO receives funding from Appendix A programs, and after providing such charter service, shall record:

(1) The QHSO's name, address, phone number, and e-mail address;

(2) The date and time of service;

(3) The number of passengers;

(4) The origin, destination, and trip length (miles and hours);

(5) The fee collected, if any; and

(6) The vehicle number for the vehicle used to provide the service.

§ 604.8 Leasing FTA funded equipment and drivers.

(a) A recipient may lease its FTA-funded equipment and drivers to registered charter providers for charter service only if the following conditions exist:

(1) The private charter operator is registered on the FTA charter registration Web site;

(2) The registered charter provider owns and operates buses or vans in a charter service business;

(3) The registered charter provider received a request for charter service that exceeds its available capacity either of the number of vehicles operated by the registered charter provider or the number of accessible vehicles operated by the registered charter provider; and

(4) The registered charter provider has exhausted all of the available vehicles of all registered charter providers in the recipient's geographic service area.

(b) A recipient leasing vehicles and drivers to a registered charter provider under this provision shall record:

(1) The registered charter provider's name, address, telephone number, and e-mail address;

(2) The number of vehicles leased, types of vehicles leased, and vehicle identification numbers; and

(3) The documentation presented by the registered charter provider in support of paragraphs (a)(1) through (4) of this section.

(c) In accordance with § 604.26, if a registered charter provider seeking to lease vehicles has filed a complaint requesting that another registered charter provider be removed from the FTA charter registration Web site, then the registered charter provider seeking to lease vehicles is not required to exhaust the vehicles from that registered charter provider while the complaint is pending before leasing vehicles from a recipient.

§ 604.9 When no registered charter provider responds to notice from a recipient.

(a) A recipient may provide charter service, on its own initiative or at the request of a third party, if no registered charter provider responds to the notice issued in § 604.14:

(1) Within 72 hours for charter service requested to be provided in less than 30 days; or

(2) Within 14 calendar days for charter service requested to be provided in 30 days or more.

(b) A recipient shall not provide charter service under this section if a registered charter provider indicates an interest in providing the charter service set out in the notice issued pursuant to § 604.14 and the registered charter provider has informed the recipient of its interest in providing the service.

(c) After providing the service, a recipient shall record:

(1) The group's name, address, phone number, and e-mail address;

(2) The date and time of service;

(3) The number of passengers;

(4) The origin, destination, and trip length (miles and hours);

(5) The fee collected, if any; and

(6) The vehicle number for the vehicle used to provide the service.

§ 604.10 Agreement with registered charter providers.

(a) A recipient may provide charter service directly to a customer consistent with an agreement entered into with all registered charter providers in the recipient's geographic service area.

(b) If a new charter provider registers in the geographic service area subsequent to the initial agreement, the recipient may continue to provide charter service under the previous agreement with the other charter providers up to 90 days without an agreement with the newly registered charter provider.

(c) Any of the parties to an agreement may cancel the agreement at any time after providing the recipient a 90-day notice.

§ 604.11 Petitions to the Administrator.

(a) A recipient may petition the Administrator for an exception to the charter service regulations to provide charter service directly to a customer for:

(1) Events of regional or national significance;

(2) Hardship (only for non-urbanized areas under 50,000 in population or small urbanized areas under 200,000 in population); or

(3) Unique and time sensitive events (e.g., funerals of local, regional, or national significance) that are in the public's interest.

(b) The petition to the Administrator shall include the following information:

(1) The date and description of the event;

(2) The type of service requested and the type of equipment;

(3) The anticipated number of charter service hours needed for the event;

(4) The anticipated number of vehicles and duration of the event; and

(i) For an event of regional or national significance, the petition shall include a description of how registered charter providers were consulted, how registered charter providers will be utilized in providing the charter service, a certification that the recipient has exhausted all of the registered charter providers in its geographic service area, and submit the petition at least 90 days before the first day of the event described in paragraph (b)(1) of this section;

(ii) For a hardship request, a petition is only available if the registered charter provider has deadhead time that exceeds total trip time from initial pick-up to final drop-off, including wait time. The petition shall describe how the registered charter provider's minimum duration would create a hardship on the group requesting the charter service; or

(iii) For unique and time sensitive events, the petition shall describe why the event is unique or time sensitive and how providing the charter service would be in the public's interest.

(c) Upon receipt of a petition that meets the requirements set forth in paragraph (b) of this section, the Administrator shall review the materials and issue a written decision denying or granting the request in whole or in part. In making this decision, the Administrator may seek such additional information as the Administrator deems necessary. The Administrator's decision shall be filed in the Petitions to the Administrator docket, number FTA–2007–0022 at *http://www.regulations.gov* and sent to the recipient.

(d) Any exception granted by the Administrator under this section shall be effective only for the event identified in paragraph (b)(1) of this section.

(e) A recipient shall send its petition to the Administrator by facsimile to (202) 366–3809 or by e-mail to *ombudsman.charterservice@dot.gov*.

(f) A recipient shall retain a copy of the Administrator's approval for a period of at least three years and shall include it in the recipient's quarterly report posted on the charter registration Web site.

§ 604.12 Reporting requirements for all exceptions.

(a) A recipient that provides charter service in accordance with one or more of the exceptions contained in this subpart shall maintain the required notice and records in an electronic format for a period of at least three years from the date of the service or lease. A recipient may maintain the required records in other formats in addition to the electronic format.

(b) In addition to the requirements identified in paragraph (a) of this section, the records required under this subpart shall include a clear statement identifying which exception the recipient relied upon when it provided the charter service.

(c) Beginning on July 30, 2008, a recipient providing charter service under these exceptions shall post the records required under this subpart on the FTA charter registration Web site 30 days after the end of each calendar quarter (i.e., January 30th, April 30th, July 30th, and October 30th). A single document or charter log may include all charter service trips provided during the quarter.

(d) A recipient may exclude specific origin and destination information for safety and security reasons. If a recipient excludes such information, the record of the service shall describe the reason why such information was excluded and provide generalized information instead of providing specific origin and destination information.

Subpart C—Procedures for Registration and Notification

§ 604.13 Registration of private charter operators.

(a) Private charter operators shall provide the following information at *http://www.fta.dot.gov/laws/leg_reg_179.html* to be considered a registered charter provider:

(1) Company name, address, phone number, e-mail address, and facsimile number;

(2) Federal and, if available, state motor carrier identifying number;

(3) The geographic service areas of public transit agencies, as identified by the transit agency's zip code, in which the private charter operator intends to provide charter service;

(4) The number of buses or vans the private charter operator owns;

(5) A certification that the private charter operator has valid insurance; and

(6) Whether willing to provide free or reduced rate charter services to registered qualified human service organizations.

(b) A private charter operator that provides valid information in this subpart is a ''registered charter provider'' for purposes of this part and shall have standing to file a complaint consistent with subpart F.

(c) A recipient, a registered charter provider, or their duly authorized representative, may challenge a registered charter provider's registration and request removal of the private charter operator from FTA's charter registration Web site by filing a complaint consistent with subpart F.

(d) FTA may refuse to post a private charter operator's information if the private charter operator fails to provide all of the required information as indicated on the FTA charter registration Web site.

(e) A registered charter provider shall provide current and accurate information on FTA's charter registration Web site, and shall update that information no less frequently than every two years.

§ 604.14 Recipient's notification to registered charter providers.

(a) Upon receiving a request for charter service, a recipient may:

(1) Decline to provide the service, with or without referring the requestor to FTA's charter registration Web site (*http://www.fta.dot.gov/laws/leg_reg_179.html*);

(2) Provide the service under an exception provided in subpart B of this part; or

(3) Provide notice to registered charter providers as provided in this section and provide the service pursuant to § 604.9.

(b) If a recipient is interested in providing charter service under the exception contained in § 604.9, then upon receipt of a request for charter service, the recipient shall provide e-mail notice to registered charter providers in the recipient's geographic service area in the following manner:

(1) E-mail notice of the request shall be sent by the close of business on the day the recipient receives the request unless the recipient received the request after 2 p.m., in which case the recipient shall send the notice by the close of business the next business day;

(2) E-mail notice sent to the list of registered charter providers shall include:

(i) Customer name, address, phone number, and e-mail address (if available);

(ii) Requested date of service;

(iii) Approximate number of passengers;

(iv) Whether the type of equipment requested is (are) bus(es) or van(s); and

(v) Trip itinerary and approximate duration; and

(3) If the recipient intends to provide service that meets the definition of charter service under § 604.3(c)(2), the e-mail notice must include the fare the recipient intends to charge for the service.

(c) A recipient shall retain an electronic copy of the e-mail notice and the list of registered charter providers that were sent e-mail notice of the requested charter service for a period of at least three years from the date the e-mail notice was sent.

(d) If a recipient receives an ''undeliverable'' notice in response to its e-mail notice, the recipient shall send the notice via facsimile. The recipient shall maintain the record of the undeliverable e-mail notice and the facsimile sent confirmation for a period of three years.

Subpart D—Registration of Qualified Human Service Organizations and Duties for Recipients With Respect to Charter Registration Web site

§ 604.15 Registration of qualified human service organizations.

(a) Qualified human service organizations (QHSO) that seek free or reduced rate services from recipients, and do not receive funds from Federal programs listed in Appendix A, but serve individuals described in § 604.7 (i.e., individuals with low income, advanced age, or with disabilities), shall register on FTA's charter registration Web site by submitting the following information:

(1) Name of organization, address, phone number, e-mail address, and facsimile number;

(2) The geographic service area of the recipient in which the qualified human service organization resides;

(3) Basic financial information regarding the qualified human service organization and whether the qualified human service organization is exempt from taxation under sections 501(c) (1), (3), (4), or (19) of the Internal Revenue Code, and whether it is a unit of Federal, State or local government;

(4) Whether the qualified human service organization receives funds directly or indirectly from a State or local program, and if so, which program(s); and

(5) A narrative statement describing the types of charter service trips the qualified human service organization may request from a recipient and how that service is consistent with the mission of the qualified human service organization.

(b) A qualified human service organization is eligible to receive charter services from a recipient if it:

(1) Registers on the FTA Web site in accordance with paragraph (a) of this section at least 60 days before the date of the requested charter service; and

(2) Verifies FTA's receipt of its registration by viewing its information on the FTA charter registration Web site (*http://www.fta.dot.gov/laws/leg_reg_179.html*).

(c) A registered charter provider may challenge a QHSO's status to receive charter services from a recipient by requesting removal of the QHSO from FTA's charter registration Web site by filing a complaint consistent with subpart F.

(d) A QHSO shall provide current and accurate information on FTA's charter registration Web site, and shall update that information no less frequently than every two years.

§ 604.16 Duties for recipients with respect to charter registration Web site.

Each recipient shall ensure that its affected employees and contractors have the necessary competency to effectively use the FTA charter registration Web site.

Subpart E—Advisory Opinions and Cease and Desist Orders

§ 604.17 Purpose.

The purpose of this subpart is to set out the requirements for requesting an advisory opinion from the Chief Counsel's Office. An advisory opinion may also request that the Chief Counsel issue a cease and desist order, which would be an order to refrain from doing an act which, if done, would be a violation of this part.

§ 604.18 Request for an advisory opinion.

(a) An interested party may request an advisory opinion from the Chief Counsel on a matter regarding specific factual events only.

(b) A request for an advisory opinion shall be submitted in the following form:

[Date]
Chief Counsel, Federal Transit Administration, 1200 New Jersey Ave. SE., Room E55–302, Washington, DC 20590
Re: Request for Advisory Opinion
The undersigned submits this request for an advisory opinion from the FTA Chief Counsel with respect to [the general nature of the matter involved].
A. A full statement of all facts and legal points relevant to the request
B. An affirmation that the undersigned swears, to the best of his/her knowledge and belief, this request includes all data, information, and views relevant to the matter, whether favorable or unfavorable to the position of the undersigned, which is the subject of the request.
C. The following certification: ''I hereby certify that I have this day served the foregoing [name of document] on the following interested party(ies) at the following addresses and e-mail or facsimile numbers (if also served by e-mail or facsimile) by [specify method of service]:
[list persons, addresses, and e-mail or facsimile numbers]''
Dated this _____ day of ____ , 20____.
[Signature]
[Printed name]
[Title of person making request]
[Mailing address]
[Telephone number]
[e-mail address]

(c) The Chief Counsel may request additional information, as necessary, from the party submitting the request for an advisory opinion.

(d) A request for an advisory opinion may be denied if:

(1) The request contains incomplete information on which to base an informed advisory opinion;

(2) The Chief Counsel concludes that an advisory opinion cannot reasonably be given on the matter involved;

(3) The matter is adequately covered by a prior advisory opinion or a regulation;

(4) The Chief Counsel otherwise concludes that an advisory opinion would not be in the public interest.

§ 604.19 Processing of advisory opinions.

(a) A request for an advisory opinion shall be sent to the Chief Counsel at *ombudsman.charterservice@dot.gov*, and filed electronically in the Charter Service Advisory Opinion/Cease and Desist Order docket number FTA–2007–0023 at *http://www.regulations.gov* or sent to the dockets office located at 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, for submission to that docket.

(b) The Chief Counsel shall make every effort to respond to a request for an advisory opinion within ten days of receipt of a request that complies with § 604.18(b). The Chief Counsel shall send his or her decision to the interested party, the docket, and the recipient, if appropriate.

§ 604.20 Effect of an advisory opinion.

(a) An advisory opinion represents the formal position of FTA on a matter, and except as provided in § 604.25 of this subpart, obligates the agency to follow it until it is amended or revoked.

(b) An advisory opinion may be used in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards, but not as a legal requirement and is limited to the factual circumstances described in the request for an advisory opinion. The Chief Counsel's advisory opinion shall not be binding upon a Presiding Official conducting a proceeding under subpart I of this part.

(c) A statement made or advice provided by an FTA employee constitutes an advisory opinion only if it is issued in writing under this section. A statement or advice given by an FTA employee orally, or given in writing, but not under this section, is an informal communication that represents the best judgment of that employee at the time but does not constitute an advisory opinion, does not necessarily represent the formal position of FTA, and does not bind or otherwise obligate or commit the agency to the views expressed.

§ 604.21 Special considerations for advisory opinions.

Based on new facts involving significant financial considerations, the Chief Counsel may take appropriate enforcement action contrary to an advisory opinion before amending or revoking the opinion. This action shall be taken only with the approval of the Administrator.

§ 604.22 Request for a cease and desist order.

(a) An interested party may also request a cease and desist order as part of its request for an advisory opinion. A request for a cease and desist order shall contain the following information in addition to the information required for an advisory opinion:

(1) A description of the need for the cease and desist order, a detailed description of the lost business opportunity the interested party is likely to suffer if the recipient performs the charter service in question, and how the public interest will be served by avoiding or ameliorating the lost business opportunity. A registered charter provider must distinguish its loss from that of other registered charter providers in the geographic service area.

(2) A detailed description of the efforts made to notify the recipient of the potential violation of the charter service regulations. Include names, titles, phone numbers or e-mail addresses of persons contacted, date and times contact was made, and the response received, if any.

(b) A request for a cease and desist order may be denied if:

(1) The request contains incomplete information on which to base an informed a cease and desist order;

(2) The Chief Counsel concludes that a cease and desist order cannot

reasonably be given on the matter involved;

(3) The matter is adequately covered by a prior a cease and desist order; or

(4) The Chief Counsel otherwise concludes that a cease and desist order would not be in the public interest.

(c) A recipient who is the subject of a request for a cease and desist order shall have three business days to respond to the request. The response shall include a point-by-point rebuttal to the information included in the request for a cease and desist order.

(d) The time period for a response by the recipient begins once a registered charter provider files a request in the Advisory Opinion/Cease and Desist Order docket (FTA–2007–0023 at *http://www.regulations.gov*) or with the FTA Chief Counsel's Office, whichever date is sooner.

§ 604.23 Effect of a cease and desist order.

(a) Issuance of a cease and desist order against a recipient shall be considered as an aggravating factor in determining the remedy to impose against the recipient in future findings of noncompliance with this part, if the recipient provides the service described in the cease and desist order issued by the Chief Counsel.

(b) In determining whether to grant the request for a cease and desist order, the Chief Counsel shall consider the specific facts shown in the signed, sworn request for a cease and desist order, applicable statutes and regulations, and any other information that is relevant to the request.

§ 604.24 Decisions by the Chief Counsel regarding cease and desist orders.

(a) The Chief Counsel may grant a request for a cease and desist order if the interested party demonstrates, by a preponderance of the evidence, that the planned provision of charter service by a recipient would violate this part.

(b) In determining whether to grant the request for a cease and desist order, the Chief Counsel shall consider the specific facts shown in the signed, sworn request for a cease and desist order, applicable statutes, regulations, agreements, and any other information that is relevant to the request.

Subpart F—Complaints

§ 604.25 Purpose.

This subpart describes the requirements for filing a complaint challenging the registration of a private charter operator or qualified human service organization on the FTA charter registration Web site and filing a complaint regarding the provision of charter service by a recipient. Note: To save time and expense for all concerned, FTA expects all parties to attempt to resolve matters informally before beginning the official complaint process.

§ 604.26 Complaints and decisions regarding removal of private charter operators or qualified human service organizations from registration list.

(a) A recipient, a registered charter provider, or its duly authorized representative, may challenge the listing of a registered charter provider or qualified human service organization on FTA's charter registration Web site by filing a complaint that meets the following:

(1) States the name and address of each entity who is the subject of the complaint;

(2) Provides a concise but complete statement of the facts relied upon to substantiate the reason why the private charter operator or qualified human service organization should not be listed on the FTA charter registration Web site;

(3) Files electronically by submitting it to the Charter Service Removal Complaint docket number FTA–2007–0024 at *http://www.regulations.gov*;

(4) Serves by e-mail or facsimile if no e-mail address is available, or by overnight mail service with receipt confirmation, and attaches documents offered in support of the complaint upon all entities named in the complaint;

(5) Files within 90 days of discovering facts that merit removal of the registered charter provider or qualified human service organization from the FTA Charter Registration Web site; and

(6) Contains the following certification:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses and e-mail or facsimile numbers (if also served by e-mail or facsimile) by [specify method of service]:

[list persons, addresses, and e-mail or facsimile numbers]

Dated this ____ day of ____, 20__.

[signature], for [party].

(b) The registered charter provider or qualified human service organization shall have 15 days to answer the complaint and shall file such answer, and all supporting documentation, in the Charter Service Removal Complaint docket number FTA–2007–0024 at *http://www.regulations.gov* and e-mail such answer to *ombudsman.charterservice@dot.gov*.

(c) A recipient, qualified human service organization, or a registered charter provider, or its duly authorized representative, shall not file a reply to the answer.

(d) FTA shall determine whether to remove the registered charter provider or qualified human service organization from the FTA charter registration Web site based on a preponderance of the evidence of one or more of the following:

(1) Bad faith;

(2) Fraud;

(3) Lapse of insurance;

(4) Lapse of other documentation; or

(5) The filing of more than one complaint, which on its face, does not state a claim that warrants an investigation or further action by FTA.

(e) FTA's determination whether or not to remove a registered charter provider or qualified human service organization from the registration list shall be sent to the parties within 30 days of the date of the response required in paragraph (b) of this section and shall state:

(1) Reasons for allowing the continued listing or removal of the registered charter provider or qualified human service organization from the registration list;

(2) If removal is ordered, the length of time (not to exceed three years) the private charter operator or qualified human service organization shall be barred from the registration list; and

(3) The date by which the private charter operator or qualified human service organization may re-apply for registration on the FTA charter registration Web site.

§ 604.27 Complaints, answers, replies, and other documents.

(a) A registered charter provider, or its duly authorized representative (''complainant''), affected by an alleged noncompliance of this part may file a complaint with the Office of the Chief Counsel.

(b) Complaints filed under this subpart shall:

(1) Be titled ''Notice of Charter Service Complaint'';

(2) State the name and address of each recipient that is the subject of the complaint and, with respect to each recipient, the specific provisions of this part that the complainant believes were violated;

(2) Be served in accordance with § 604.31, along with all documents then available in the exercise of reasonable diligence, offered in support of the complaint, upon all recipients named in the complaint as being responsible for the alleged action(s) or omission(s) upon which the complaint is based;

(3) Provide a concise but complete statement of the facts relied upon to

substantiate each allegation (complainant must show by a preponderance of the evidence that the recipient provided charter service and that such service did not fall within one of the exemptions or exceptions set out in this part);

(4) Describe how the complainant was directly and substantially affected by the things done or omitted by the recipients;

(5) Identify each registered charter provider associated with the complaint; and

(6) Be filed within 90 days after the alleged event giving rise to the complaint occurred.

(c) Unless the complaint is dismissed pursuant to § 604.28 or § 604.29, FTA shall notify the complainant, respondent, and state recipient, if applicable, within 30 days after the date FTA receives the complaint that the complaint has been docketed. Respondent shall have 30 days from the date of service of the FTA notification to file an answer.

(d) The complainant may file a reply within 20 days of the date of service of the respondent's answer.

(e) The respondent may file a rebuttal within 10 days of the date of service of the reply.

(f) The answer, reply, and rebuttal shall, like the complaint, be accompanied by the supporting documentation upon which the submitter relies.

(g) The answer shall deny or admit the allegations made in the complaint or state that the entity filing the document is without sufficient knowledge or information to admit or deny an allegation, and shall assert any affirmative defense.

(h) The answer, reply, and rebuttal shall each contain a concise but complete statement of the facts relied upon to substantiate the answers, admissions, denials, or averments made.

(i) The respondent's answer may include a motion to dismiss the complaint, or any portion thereof, with a supporting memorandum of points and authorities.

(j) The complainant may withdraw a complaint at any time after filing by serving a ''Notification of Withdrawal'' on the Chief Counsel and the respondent.

§ 604.28 Dismissals.

(a) Within 20 days after the receipt of a complaint described in § 604.27, the Office of the Chief Counsel shall provide reasons for dismissing a complaint, or any claim in the complaint, with prejudice, under this section if:

(1) It appears on its face to be outside the jurisdiction of FTA under the Federal Transit Laws;

(2) On its face it does not state a claim that warrants an investigation or further action by FTA; or

(3) The complainant lacks standing to file a complaint under subparts B, C, or D of this part.

(b) [Reserved]

§ 604.29 Incomplete complaints.

If a complaint is not dismissed under § 604.28, but is deficient as to one or more of the requirements set forth in § 604.27, the Office of the Chief Counsel may dismiss the complaint within 20 days after receiving it. Dismissal shall be without prejudice and the complainant may re-file after amendment to correct the deficiency. The Chief Counsel's dismissal shall include the reasons for the dismissal without prejudice.

§ 604.30 Filing complaints.

(a) *Filing address.* Unless provided otherwise, the complainant shall file the complaint with the Office of the Chief Counsel, 1200 New Jersey Ave., SE., Room E55–302, Washington, DC 20590 and file it electronically in the Charter Service Complaint docket number FTA–2007–0025 at *http://www.regulations.gov* or mail it to the docket by sending the complaint to 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

(b) *Date and method of filing.* Filing of any document shall be by personal delivery, U.S. mail, or overnight delivery with receipt confirmation. Unless the date is shown to be inaccurate, documents to be filed with FTA shall be deemed filed, on the earliest of:

(1) The date of personal delivery;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) The mailing date shown by other evidence if there is no certificate of service and no postmark.

(c) *E-mail or fax.* A document sent by facsimile or e-mail shall not constitute service as described in § 604.31.

(d) *Number of copies.* Unless otherwise specified, an executed original shall be filed with FTA.

(e) *Form.* Documents filed with FTA shall be typewritten or legibly printed. In the case of docketed proceedings, the document shall include a title and the docket number, as established by the Chief Counsel or Presiding Official, of the proceeding on the front page.

(f) *Signing of documents and other papers.* The original of every document filed shall be signed by the person filing it or the person's duly authorized representative. Subject to the enforcement provisions contained in this subpart, the signature shall serve as a certification that the signer has read the document and, based on reasonable inquiry, to the best of the signer's knowledge, information, and belief, the document is:

(1) Consistent with this part;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the administrative process.

§ 604.31 Service.

(a) *Designation of person to receive service.* The initial document filed by the complainant shall state on the first page of the document for all parties to be served:

(1) The title of the document;

(2) The name, post office address, telephone number; and

(3) The facsimile number, if any, and e-mail address(es), if any.

If any of the above items change during the proceeding, the person shall promptly file notice of the change with FTA and the Presiding Official, if appropriate, and shall serve the notice on all other parties to the proceeding.

(b) *Docket numbers.* Each submission identified as a complaint under this part by the submitting party shall be filed in the Charter Service Complaint docket FTA–2007–0025.

(c) *Who must be served.* Copies of all documents filed with FTA shall be served by the entity filing them on all parties to the proceeding. A certificate of service shall accompany all documents when they are tendered for filing and shall certify concurrent service on FTA and all parties. Certificates of service shall be in substantially the following form:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses and e-mail or facsimile numbers (if also served by e-mail or facsimile) by [specify method of service]:

[list persons, addresses, and e-mail or facsimile numbers]

Dated this _____ day of _____, 20____.

[signature], for [party]

(d) *Method of service.* Except as otherwise provided in § 604.26, or agreed by the parties and the Presiding Official, as appropriate, the method of service is personal delivery or U.S. mail.

(e) *Presumption of service.* There shall be a presumption of lawful service:

(1) When acknowledgment of receipt is by a person who customarily or in the ordinary course of business receives mail at the address of the party or of the person designated under this section; or

(2) When a properly addressed envelope, sent to the last known address has been returned as undeliverable, unclaimed, or refused.

Subpart G—Investigations

§ 604.32 Investigation of complaint.

(a) If, based on the pleadings, there appears to be a reasonable basis for investigation, FTA shall investigate the subject matter of the complaint.

(b) The investigation may include a review of written submissions or pleadings of the parties, as supplemented by any informal investigation FTA considers necessary and by additional information furnished by the parties at FTA request. Each party shall file documents that it considers sufficient to present all relevant facts and argument necessary for FTA to determine whether the recipient is in compliance.

(c) The Chief Counsel shall send a notice to complainant(s) and respondent(s) once an investigation is complete, but not later than 90 days after receipt of the last pleading specified in § 604.27 was due to FTA.

§ 604.33 Agency initiation of investigation.

(a) Notwithstanding any other provision under these regulations, FTA may initiate its own investigation of any matter within the applicability of this Part without having received a complaint. The investigation may include, without limitation, any of the actions described in § 604.32.

(b) Following the initiation of an investigation under this section, FTA sends a notice to the entities subject to investigation. The notice will set forth the areas of FTA's concern and the reasons; request a response to the notice within 30 days of the date of service; and inform the respondent that FTA will, in its discretion, invite good faith efforts to resolve the matter.

(c) If the matters addressed in the FTA notice are not resolved informally, the Chief Counsel may refer the matter to a Presiding Official.

Subpart H—Decisions by FTA and Appointment of a Presiding Official (PO)

§ 604.34 Chief Counsel decisions and appointment of a PO.

(a) After receiving a complaint consistent with § 604.27, and conducting an investigation, the Chief Counsel may:

(1) Issue a decision based on the pleadings filed to date;

(2) Appoint a PO to review the matter; or

(3) Dismiss the complaint pursuant to § 604.28.

(b) If the Chief Counsel appoints a PO to review the matter, the Chief Counsel shall send out a hearing order that sets forth the following:

(1) The allegations in the complaint, or notice of investigation, and the chronology and results of the investigation preliminary to the hearing;

(2) The relevant statutory, judicial, regulatory, and other authorities;

(3) The issues to be decided;

(4) Such rules of procedure as may be necessary to supplement the provisions of this Part;

(5) The name and address of the PO, and the assignment of authority to the PO to conduct the hearing in accordance with the procedures set forth in this Part; and

(6) The date by which the PO is directed to issue a recommended decision.

§ 604.35 Separation of functions.

(a) Proceedings under this part shall be handled by an FTA attorney, except that the Chief Counsel may appoint a PO, who may not be an FTA attorney.

(b) After issuance of an initial decision by the Chief Counsel, the FTA employee or contractor engaged in the performance of investigative or prosecutorial functions in a proceeding under this part shall not, in that case or a factually related case, participate or give advice in a final decision by the Administrator or his or her designee on written appeal, and shall not, except as counsel or as witness in the public proceedings, engage in any substantive communication regarding that case or a related case with the Administrator on written appeal.

Subpart I—Hearings.

§ 604.36 Powers of a PO.

A PO may:

(a) Give notice of, and hold, pre-hearing conferences and hearings;

(b) Administer oaths and affirmations;

(c) Issue notices of deposition requested by the parties;

(d) Limit the frequency and extent of discovery;

(e) Rule on offers of proof;

(f) Receive relevant and material evidence;

(g) Regulate the course of the hearing in accordance with the rules of this part to avoid unnecessary and duplicative proceedings in the interest of prompt and fair resolution of the matters at issue;

(h) Hold conferences to settle or to simplify the issues by consent of the parties;

(i) Dispose of procedural motions and requests;

(j) Examine witnesses; and

(k) Make findings of fact and conclusions of law and issue a recommended decision.

§ 604.37 Appearances, parties, and rights of parties.

(a) Any party to the hearing may appear and be heard in person and any party to the hearing may be accompanied, represented, or advised by an attorney licensed by a State, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that State or territory, or by another duly authorized representative. An attorney, or other duly authorized representative, who represents a party shall file according to the filing and service procedures contained in § 604.30 and § 604.31.

(b) The parties to the hearing are the respondent(s) named in the hearing order, the complainant(s), and FTA, as represented by the PO.

(c) The parties to the hearing may agree to extend for a reasonable period of time the time for filing a document under this part. If the parties agree, the PO shall grant one extension of time to each party. The party seeking the extension of time shall submit a draft order to the PO to be signed by the PO and filed with the hearing docket. The PO may grant additional oral requests for an extension of time where the parties agree to the extension.

(d) An extension of time granted by the PO for any reason extends the due date for the PO's recommended decision and for the final agency decision by the length of time in the PO's extension.

§ 604.38 Discovery.

(a) Permissible forms of discovery shall be within the discretion of the PO.

(b) The PO shall limit the frequency and extent of discovery permitted by this section if a party shows that:

(1) The information requested is cumulative or repetitious;

(2) The information requested may be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

§ 604.39 Depositions.

(a) For good cause shown, the PO may order that the testimony of a witness may be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Generally, an order to take the deposition of a witness is entered only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing;

(2) The deposition is deemed necessary to perpetuate the testimony of the witness; or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in undue burden to other parties or in undue delay.

(b) Any party to the hearing desiring to take the deposition of a witness according to the terms set out in this subpart, shall file a motion with the PO, with a copy of the motion served on each party. The motion shall include:

(1) The name and residence of the witness;

(2) The time and place for the taking of the proposed deposition;

(3) The reasons why such deposition should be taken; and

(4) A general description of the matters concerning which the witness will be asked to testify.

(c) If good cause is shown in the motion, the PO in his or her discretion, issues an order authorizing the deposition and specifying the name of the witness to be deposed, the location and time of the deposition and the general scope and subject matter of the testimony to be taken.

(d) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers of the witness transcribed verbatim. The written transcript shall be subscribed by the witness, unless the parties by stipulation waive the signing, or the witness is ill, cannot be found, or refuses to sign. The reporter shall note the reason for failure to sign.

§ 604.40 Public disclosure of evidence.

(a) Except as provided in this section, the hearing shall be open to the public.

(b) The PO may order that any information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the PO. The person shall state specific grounds for nondisclosure in the motion.

(c) The PO shall grant the motion to withhold information from public disclosure if the PO determines that disclosure would be in violation of the Privacy Act, would reveal trade secrets or privileged or confidential commercial or financial information, or is otherwise prohibited by law.

§ 604.41 Standard of proof.

The PO shall issue a recommended decision or shall rule in a party's favor only if the decision or ruling is supported by a preponderance of the evidence.

§ 604.42 Burden of proof.

(a) The burden of proof of noncompliance with this part, determination, or agreement issued under the authority of the Federal Transit Laws is on the registered charter provider.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

§ 604.43 Offer of proof.

A party whose evidence has been excluded by a ruling of the PO, during a hearing in which the respondent had an opportunity to respond to the offer of proof, may offer the evidence on the record when filing an appeal.

§ 604.44 Record.

(a) The transcript of all testimony in the hearing, all exhibits received into evidence, all motions, applications requests and rulings, and all documents included in the hearing record shall constitute the exclusive record for decision in the proceedings and the basis for the issuance of any orders.

(b) Any interested person may examine the record by entering the docket number at *http://www.regulations.gov* or after payment of reasonable costs for search and reproduction of the record.

§ 604.45 Waiver of procedures.

(a) The PO shall waive such procedural steps as all parties to the hearing agree to waive before issuance of an initial decision.

(b) Consent to a waiver of any procedural step bars the raising of this issue on appeal.

(c) The parties may not by consent waive the obligation of the PO to enter a recommended decision on the record.

§ 604.46 Recommended decision by a PO.

(a) The PO shall issue a recommended decision based on the record developed during the proceeding and shall send the recommended decision to the Chief Counsel for ratification or modification not later than 110 days after the referral from the Chief Counsel.

(b) The Chief Counsel shall ratify or modify the PO's recommended decision within 30 days of receiving the recommended decision. The Chief Counsel shall serve his or her decision, which is capable of being appealed to the Administrator, on all parties to the proceeding.

§ 604.47 Remedies.

(a) If the Chief Counsel determines that a violation of this part occurred, he or she may take one or more of the following actions:

(1) Bar the recipient from receiving future Federal financial assistance from FTA;

(2) Order the withholding of a reasonable percentage of available Federal financial assistance; or

(3) Pursue suspension and debarment of the recipient, its employees, or its contractors.

(b) In determining the type and amount of remedy, the Chief Counsel shall consider the following factors:

(1) The nature and circumstances of the violation;

(2) The extent and gravity of the violation (''extent of deviation from regulatory requirements'');

(3) The revenue earned (''economic benefit'') by providing the charter service;

(4) The operating budget of the recipient;

(5) Such other matters as justice may require; and

(6) Whether a recipient provided service described in a cease and desist order after issuance of such order by the Chief Counsel.

(c) The Chief Counsel office may mitigate the remedy when the recipient can document corrective action of alleged violation. The Chief Counsel's decision to mitigate a remedy shall be determined on the basis of how much corrective action was taken by the recipient and when it was taken. Systemic action to prevent future violations will be given greater consideration than action simply to remedy violations identified during FTA's inspection or identified in a complaint.

(d) In the event the Chief Counsel finds a pattern of violations, the remedy ordered shall bar a recipient from receiving Federal transit assistance in an amount that the Chief Counsel considers appropriate.

(e) The Chief Counsel may make a decision to withhold Federal financial assistance in a lump sum or over a period of time not to exceed five years.

Subpart J—Appeal to Administrator and Final Agency Orders

§ 604.48 Appeal from Chief Counsel decision.

(a) Each party adversely affected by the Chief Counsel's office decision may file an appeal with the Administrator within 21 days of the date of the Chief Counsel's issued his or her decision. Each party may file a reply to an appeal within 21 days after it is served on the party. Filing and service of appeals and replies shall be by personal delivery consistent with §§ 604.30 and 604.31.

(b) If an appeal is filed, the Administrator reviews the entire record and issues a final agency decision based on the record that either accepts, rejects, or modifies the Chief Counsel's decision within 30 days of the due date of the reply. If no appeal is filed, the Administrator may take review of the case on his or her own motion. If the Administrator finds that the respondent is not in compliance with this part, the final agency order shall include a statement of corrective action, if appropriate, and identify remedies.

(c) If no appeal is filed, and the Administrator does not take review of the decision by the office on the Administrator's own motion, the Chief Counsel's decision shall take effect as the final agency decision and order on the twenty-first day after the actual date the Chief Counsel's decision was issued.

(d) The failure to file an appeal is deemed a waiver of any rights to seek judicial review of the Chief Counsel's decision that becomes a final agency decision by operation of paragraph (c) of this section.

§ 604.49 Administrator's discretionary review of the Chief Counsel's decision.

(a) If the Administrator takes review on the Administrator's own motion, the Administrator shall issue a notice of review by the twenty-first day after the actual date of the Chief Counsel's decision that contains the following information:

(1) The notice sets forth the specific findings of fact and conclusions of law in the decision subject to review by the Administrator.

(2) Parties may file one brief on review to the Administrator or rely on their post-hearing briefs to the Chief Counsel's office. Briefs on review shall be filed not later than 10 days after service of the notice of review. Filing and service of briefs on review shall be by personal delivery consistent with § 604.30 and § 604.31.

(3) The Administrator issues a final agency decision and order within 30 days of the due date of the briefs on review. If the Administrator finds that the respondent is not in compliance with this part, the final agency order shall include a statement of corrective action, if appropriate, and identify remedies.

(b) If the Administrator takes review on the Administrator's own motion, the decision of the Chief Counsel is stayed pending a final decision by the Administrator.

Subpart K—Judicial Review

§ 604.50 Judicial review of a final decision and order.

(a) A person may seek judicial review in an appropriate United States District Court of a final decision and order of the Administrator as provided in 5 U.S.C. 701–706. A party seeking judicial review of a final decision and order shall file a petition for review with the Court not later than 60 days after a final decision and order is effective.

(b) The following do not constitute final decisions and orders subject to judicial review:

(1) FTA's decision to dismiss a complaint as set forth in § 604.29;

(2) A recommended decision issued by a PO at the conclusion of a hearing; or

(3) A Chief Counsel decision that becomes the final decision of the Administrator because it was not appealed within the stated timeframes.

Appendix A to Part 604—Listing of Human Service Federal Financial Assistance Programs

FEDERAL PROGRAMS PROVIDING TRANSPORTATION ASSISTANCE

1	Food Stamp, Employment and Training Program.	Food and Nutrition Service	Department of Agriculture.
2	Voluntary Public School Choice	Office of Innovation and Improvement	Department of Education.
3	Assistance for Education of All Children with Disabilities—IDEA.	Office of Special Education and Rehabilitative Services.	Department of Education.
4	Centers for Independent Living	Office of Special Education and Rehabilitative Services.	Department of Education.
5	Independent Living for Older Individuals Who Are Blind.	Office of Special Education and Rehabilitative Services.	Department of Education.
6	Independent Living State Grants	Office of Special Education and Rehabilitative Services.	Department of Education.
7	Supported Employment Services for Individuals with Most Significant Disabilities.	Office of Special Education and Rehabilitative Services.	Department of Education.
8	Vocational Rehabilitative Grants	Office of Special Education and Rehabilitative Services.	Department of Education.
9	Social Service Block Grant	Administration for Children and Families	Department of Health and Human Services.
10	Child Care and Development Fund	Administration for Children and Families	Department of Health and Human Services.
11	Head Start	Administration for Children and Families	Department of Health and Human Services.
12	Refugee and Entrant Assistance Discretionary Grants.	Administration for Children and Families	Department of Health and Human Services.
13	Refugee and Entrant Assistance State Administered Programs.	Administration for Children and Families	Department of Health and Human Services.
14	Refugee and Entrant Targeted Assistance	Administration for Children and Families	Department of Health and Human Services.
15	Refugee and Entrant Assistance Voluntary Agency Programs.	Administration for Children and Families	Department of Health and Human Services.
16	State Development Disabilities Council and Protection & Advocacy.	Administration for Children and Families	Department of Health and Human Services.
17	Temporary Assistance to Needy Families	Administration for Children and Families	Department of Health and Human Services.
18	Community Services Block Grant	Administration for Children and Families	Department of Health and Human Services.
19	Promoting Safe and Stable Families	Administration for Children and Families	Department of Health and Human Services.
20	Developmental Disabilities Projects of National Significance.	Administration for Children and Families	Department of Health and Human Services.

FEDERAL PROGRAMS PROVIDING TRANSPORTATION ASSISTANCE—Continued

21 ...	Grants for Supportive Services and Senior Centers.	Administration on Aging	Department of Health and Human Services.
22 ...	Programs for American Indian, Alaskan Native and Native Hawaii Elders.	Administration on Aging	Department of Health and Human Services.
23 ...	Medicaid	Centers for Medicaid and Medicare	Department of Health and Human Services.
24 ...	State Health Insurance Program	Centers for Medicaid and Medicare	Department of Health and Human Services.
25 ...	Home and Community Base Waiver	Centers for Medicaid and Medicare	Department of Health and Human Services.
26 ...	Community Health Centers	Health Resources and Services Administration.	Department of Health and Human Services.
27 ...	Healthy Communities	Health Resources and Services Administration.	Department of Health and Human Services.
28 ...	HIV Care Formula Program	Health Resources and Services Administration.	Department of Health and Human Services.
29 ...	Maternal and Child Health Block Grant	Health Resources and Services Administration.	Department of Health and Human Services.
30 ...	Rural Health Care Network	Health Resources and Services Administration.	Department of Health and Human Services.
31 ...	Rural Health Care Outreach Program	Health Resources and Services Administration.	Department of Health and Human Services.
32 ...	Health Start Initiative	Health Resources and Services Administration.	Department of Health and Human Services.
33 ...	Ryan White Care Act Programs	Health Resources and Services Administration.	Department of Health and Human Services.
34 ...	Substance Abuse Prevention and Treatment Block Grant.	Substance Abuse and Mental Health Services Administration.	Department of Health and Human Services.
35 ...	Prevention and Texas Block Grant	Substance Abuse and Mental Health Services Administration.	Department of Health and Human Services.
36 ...	Community Development Block Grant	Community Planning and Development	Department of Housing and Urban Development.
37 ...	Housing Opportunities for Persons with AIDS.	Community Planning and Development	Department of Housing and Urban Development.
38 ...	Supportive Housing Program	Community Planning and Development	Department of Housing and Urban Development.
39 ...	Revitalization of Severely Distressed Public Housing.	Public and Indian Housing	Department of Housing and Urban Development.
40 ...	Indian Employment Assistance	Bureau of Indian Affairs	Department of the Interior.
41 ...	Indian Employment, Training, and Related Services.	Bureau of Indian Affairs	Department of the Interior.
42 ...	Black Lung Benefits	Employment Standards Administration	Department of Labor.
43 ...	Senior Community Services Employment Program.	Employment Standards Administration	Department of Labor.
44 ...	Job Corps	Employment and Training Administration	Department of Labor.
45 ...	Migrant and Seasonal Farm Worker	Employment and Training Administration	Department of Labor.
46 ...	Native American Employment and Training	Employment and Training Administration	Department of Labor.
47 ...	Welfare to Work Grants for Tribes	Employment and Training Administration	Department of Labor.
48 ...	Welfare to Work for States and Locals	Employment and Training Administration	Department of Labor.
49 ...	Work Incentive Grants	Employment and Training Administration	Department of Labor.
50 ...	Workforce Investment Act Adult Services Program.	Employment and Training Administration	Department of Labor.
51 ...	Workforce Investment Act Adult Dislocated Worker Program.	Employment and Training Administration	Department of Labor.
52 ...	Workforce Investment Act Youth Activities Program.	Employment and Training Administration	Department of Labor.
53 ...	Homeless Veterans Reintegration Program	Veterans Employment & Training Service	Department of Labor.
54 ...	Veterans Employment Program	Veterans Employment & Training Service	Department of Labor.
55 ...	Elderly and Persons with Disability	Federal Transit Administration	Department of Transportation.
56 ...	New Freedom Program	Federal Transit Administration	Department of Transportation.
57 ...	Job Access and Reverse Commute Program.	Federal Transit Administration	Department of Transportation.
58 ...	Non-Urbanized Area Program	Federal Transit Administration	Department of Transportation.
59 ...	Capital Discretionary Program	Federal Transit Administration	Department of Transportation.
60 ...	Urbanized Area Formula Program	Federal Transit Administration	Department of Transportation.
61 ...	Automobiles and Adaptive Equipment	Veterans Benefits Administration	Department of Veterans Affairs.
62 ...	Homeless Provider Grants	Veterans Health Administration	Department of Veterans Affairs.
63 ...	Veterans Medical Care Benefits	Veterans Health Administration	Department of Veterans Affairs.
64 ...	Ticket to Work Program	Social Security Administration	Department of Veterans Affairs.

Appendix B to Part 604—Basis for Removal From Charter Registration Web Site

The following is an explanation of terms contained in Section 604.27(d) concerning reasons for which FTA may remove a private charter operator or a qualified human service from the FTA charter registration Web site.

What is bad faith?

Bad faith is the actual or constructive fraud or a design to mislead or deceive another or a neglect or refusal to fulfill a duty or contractual obligation. It is not an honest mistake. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

For example, it would be bad faith for a registered charter provider to respond to a recipient's notification to registered charter providers of a charter service opportunity stating that it would provide the service with no actual intent to perform the charter service. It would not be bad faith for a registered charter operator to fail to provide charter service in response to a recipient's notification when it honestly mistook the date, place or time the service was to be provided.

What is fraud?

Fraud is the suggestion or assertion of a fact that is not true, by one who has no reasonable ground for believing it to be true; the suppression of a fact by one who is bound to disclose it; one who gives information of other facts which are likely to mislead; or a promise made without any intention of performing it. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

Examples of fraud include but are not limited to: (1) A registered charter operator indicates that it has a current state or Federal safety certification when it knows that it does not in fact have one; (2) a broker that owns no charter vehicles registers as a registered charter provider; (3) a registered charter provider intentionally misrepresents its legal geographic service area.

What is a lapse of insurance?

A lapse of insurance occurs when there is no policy of insurance is in place. This may occur when there has been default in payment of premiums on an insurance policy and the policy is no longer in force. In addition, no other policy of insurance has taken its place.

Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

What is a lapse of other documentation?

A lapse of other documentation means for example, but is not limited to, failure to have or loss or revocation of business license, operating authority, failure to notify of current company name, address, phone number, e-mail address and facsimile number, failure to have a current state or Federal safety certification, or failure to provide accurate Federal of state motor carrier identifying number.

Black's Law Dictionary, Revised Fourth Edition, West Publishing Company, St. Paul, Minn., 1968.

What is a complaint that does not state a claim that warrants an investigation or further action by FTA?

A complaint is a document describing a specific instance that allegedly constitutes a violation of the charter service regulations set forth in 49 CFR 604.28. More than one complaint may be contained in the same document. A complaint does not state a claim that warrants investigation when the allegations made in the complaint, without considering any extraneous material or matter, do not raise a genuine issue as to any material question of fact, and based on the undisputed facts stated in the complaint, there is no violation of the charter service statute or regulation as a matter of law. Based on Federal Rules of Civil Procedure, Rule 56(c).

Examples of complaints that would not warrant an investigation or further action by FTA include but are no limited to: (1) A complaint against a public transit agency that does not receive FTA funding; (2) a complaint brought against a public transit agency by a private charter operator that is neither a registered charter provider nor its duly authorized representative; (3) a complaint that gives no information as to when or where the alleged prohibited charter service took place.

Appendix C to Part 604—Charter Service Questions and Answers

The following questions were taken from comments submitted to the Notice of Proposed Rulemaking. Some questions have been modified slightly from the original text.

(a) Applicability

(1) Q: How do I know if these charter regulations apply to my transit agency?

A: If your transit agency accepts FTA financial assistance, the charter regulations probably apply. Your next step is to look at the exemptions contained in section 604.2 (''Applicability''). If none of these exemptions apply, look at the definition of charter service contained in section 604.3 (''Definitions''). Determine if the activity your agency is about to engage in fits within that definition. If not, then the charter regulations do not apply. If the activity does fit within the definition of charter service, then you need to determine whether the activity fits within one of the exceptions contained in subpart B (''Exceptions''). Remember that you may not provide the service if a registered charter provider indicates an interest in providing the service. This is true even if the registered charter provider does not ultimately reach an agreement with the customer.

(2) Q: How are registered private charter providers identified? Is there some kind of proof requirement that charter operators can actually provide service to a particular area? Or, do charter operators have to have a history of providing service to the area they claim to serve?

A: A registered charter provider is a private operator who wishes to receive notification of pending charter service requests directed to public transit agencies and has registered on FTA's charter registration Web site. When registering, charter providers are required to provide specific information, including areas served. They are not required to provide proof of such service. Additionally, the entire registration process is a self-certification process; FTA does not confirm the representations or information that the registered charter provider provides. Finally, a registered charter provider also does not have to demonstrate a history of providing service in the areas it claims to serve.

(3) Q: Is there any geographical limitation on where a private charter operator can register?

A: No. There is no geographical limitation on which areas a private charter operator may register. This means a private charter operator may register for several states or across the United States. If a registered charter provider, however, indicates interest in providing charter service to a particular customer and fails to negotiate in good faith with the customer, and a public transit agency was willing to provide the service, then the public transit agency can file a complaint under 49 CFR section 604.26 against the registered charter provider.

(4) Q: Who is considered a ''private charter operator?'' What are the criteria to establish that classification?

A: A ''private charter operator'' is any private, for-profit entity (i.e., individual, group or company) that provides chartered transportation on a regular basis with its own equipment (e.g., bus and/or van).

(5) Q: Is there a definition of ''geographic service area?''

A: Yes. Geographic service area is defined under 49 CFR section 604.3(j) as, ''the entire area in which a recipient is authorized to provide public transportation service under appropriate local, state and Federal law.''

(6) Q: Do charter service hours include time spent waiting for passengers where the vehicle is not available for other services?

A: Yes. Charter service hours include both time spent transporting passengers and time spent waiting for passengers. Charter service hours also include ''deadhead'' hours which is the time spent getting from the garage to the origin of the trip and then the time spent from the trip's ending destination back to the garage, since the vehicle is unavailable during that time period as well.

(7) Q: Qualified Human Service Organizations (QHSOs) that do not receive funds from Federal programs listed in Appendix A are required to certify that their federal funds include funding for transportation. However, most Federal funds are passed through one or more levels of state and local government, so how can we be certain what the original purposes of the Federal funds were?

A: The regulation, 49 CFR 604.15(b), has been modified. That provision no longer requires QHSOs to certify that their funding included funding for transportation.

(8) Q: What is the status of sub-grantees and entities with equipment and operations not assisted with federal funds?

A: The regulations do not apply to equipment that is fully funded with local funds and is stored in a locally funded

facility and is maintained with only local funds.

(9) Q: Must a private charter provider that provides public transportation services under contract or agreement with a public transit agency abide by the limitations in the proposed rule?

A: Yes. Private charter providers that provide public transportation service under contract with a public transit agency are covered by the new regulation when they are operating FTA funded equipment or services. These private charter operators are standing in the shoes of the public transit agency, and therefore cannot use federally funded equipment to provide charter services. This does not mean, however, that a private charter operator that contracts with a public transit agency and uses one of the private charter operator's own vehicles is subject to the charter service regulations (see section 604.2(c)).

(10) Q: Does the analysis change under different contractual scenarios (e.g., turnkey operations, operation and maintenance of vehicles provided by the public transit agency, or operation of contractor owned buses maintained in a federally funded facility owned by a public transit agency)?

A: Yes. The regulations, however, only apply when the contract is funded with FTA funds or the buses are funded with FTA funds or the equipment is maintained in an FTA funded facility.

(11) Q: May a private charter operator that qualifies as a sub-grantee of a state, under an FTA-administered program, use vehicles purchased with federal assistance to provide private charter services?''

A: It depends. A private charter operator that receives FTA assistance can use FTA-funded equipment to provide service for program purposes (see section 604.2(e)), but not for other charter service. Under the provisions of section 604.2(c), however, the regulations do not apply to non-FTA funded activities of private charter operators that receive directly or indirectly FTA financial assistance under programs such as sections 5307, 5309, 5310, 5311, 5316, and 5317. Further, an intercity bus operator that receives assistance under section 5311(f) to provide rural intercity bus service may provide charter service using a FTA-funded vehicle only if one of the exceptions applies. A vehicle equipped with a lift using FTA assistance under section 3038 of TEA–21 may be used for charter service.

(12) Q: Is there an emergency charter exception for 'actual, imminent or anticipated possibility of injury, loss of life, or loss of property?' For instance, there could be a poison gas plume or threat of one from an industrial accident or railcar derailment. A transit agency could be called to do a rapid evacuation of an apartment, hospital, school, elder care facility or some other facility requiring group or individual evacuation. Must the public transit agencies wait for the Administrator to declare this incident an event of 'regional or national significance' so that transit buses can be used?

A: Yes, there is an exception for emergencies. Section 604.2(f) contains an exemption that allows for public transit agencies to respond to emergencies that last fewer than 45 days. If an emergency lasts longer than 45 days, the public transit agency must follow the procedures set out in subpart D of 49 CFR part 601. The Administrator does not declare an emergency. Rather, the President, Governor, or Mayor declares the emergency.

(13) Q: If an emergency is exactly 45 days long, is the emergency services exception still applicable?

A: Yes. If the emergency lasts exactly 45 days the emergency services exception is still applicable. The regulation refers to calendar days, not business days. Therefore, if the emergency lasts more than 45 calendar days, the public transit agency must follow the procedures set out in subpart D of 49 CFR part 601.

(14) Q: Do emergency situations include matters of security—e.g., when the Secret Service requests vehicles with no under-vehicle luggage compartments?

A: No. Situations involving the Secret Service would fall under the government officials section of the regulation (49 CFR section 604.7), which allows up to 80 hours annually of charter service to government officials on official government business, which can include non-transit purposes.

(15) Q: Are rural transit operators (section 5311) exempt from the rule? What about recipients of 5310 vehicles or JARC or New Freedom grants?

A: Recipients under section 5311, 5310, 5316, and 5317 are not subject to the charter rule when using FTA-funded vehicles to provide public transportation or coordinated human service transportation or to serve groups of individuals with disabilities, the elderly, or low income individuals. The charter rule does apply, however, if the FTA recipient wants to provide other charter service using FTA-funded or maintained vehicles. A rural transit operator may provide other charter service only under the exemptions/exceptions contained in the rule.

(b) Exemptions

(16) Q: Does the exemption of demand response service from the definition of charter service exclude rural and small urban systems entirely?

A: No. The exemption of demand response service from the definition of charter service is intended to exclude service provided to individuals, as opposed to a group, who request service such as paratransit service. In addition, the exception contained in section 604.7 does not include service provided to QHSOs (organizations providing service to persons with disabilities, low income individuals, and the elderly).

(17) Q: Is there an expedited process to obtain the Administrator's decision and signature for time sensitive events so that there could be sufficient time to plan and implement service?

A: Petitions to the Administrator for events of regional or national significance will be processed as quickly as practicable.

(c) Definitions

(18) Q: If a transit agency provides service that is irregular or on a limited basis for an exclusive group of individuals, but provides the service free of charge, is the service exempt from the charter regulation?

A: Yes. So long as the transit agency does not charge a premium fare for the service and there is no third party paying for the service in whole or in part.

(19) Q: Does ''qualified human service agency'' include any non-profit entity that provides services to the disabled, or economically disadvantaged without reference to age?

A: Yes, so long as the QHSO either receives funding from one of the programs listed in Appendix A or registers as a QHSO on the FTA charter Web site. Under section 604.7, a recipient may provide charter service to entities that meet the definition of ''qualified human service organization.'' This includes organizations that serve persons who qualify for human service or transportation-related programs or services due to a disability, income or advanced age. All three are not required, however, so an organization may qualify as a QHSO but serve only persons with low income.

(20) Q: Is it charter service when the local transit authority provides event or fair service, that is open to the public, with or without charge, where the transit authority determines the routes and times and it is scheduled for the same time every year, but the Fair Association subsidizes all or part of the costs?

A: Yes. The fact that the Fair Association pays for the service in whole or in part means the service is charter under section 604.3(c)(2).

(21) Q: What qualifies as indirect financial assistance?

A: The inclusion of ''indirect'' financial assistance as part of the definition of ''recipient'' is covers ''subrecipients.'' We modified the definition of recipient in the final rule to make this point clear.

(22) Q: When a transit authority contracts out its smaller accessible vehicles for use during football games to offer service free of charge for persons with disabilities and their escorts, is it charter service?

A: Yes. Under the facts presented, this type of service falls under the definition of charter service in section 604.3(c)(1). Since ''contracting out'' involves a third party, exclusive use, and a negotiated price. Thus, the transit authority would need to determine whether one of the exceptions under subpart B applies.

(23) Q: Is it considered charter service when the transit authority funds shuttles to and from football games? Regularly scheduled service is suspended on these days, but this service partially follows the existing route and is open to the public at the regular fare.

A: No. If the service provided by the public transit agency costs the same as the customary fixed route fare and it is open to the public then it is not charter.

(24) Q: Is shuttle service for a one-time event considered charter service, if the service is open to the public, widely advertised, and the itinerary is determined by the transit operator? What if the service has been provided for decades?

A: No. So long as the transit authority charges its customary fixed route fare for the shuttle service, and there is no third party involvement, then the service is not charter. Widely advertising the service or providing the service for decades has no bearing on whether the service is charter.

(25) Q: Is demand response service included in the definition of charter service?

A: No. Demand response service is excluded from the definition of charter service under section 604.3(c).

(26) Q: Is it charter service when a university pays a public transit agency a fixed charge to allow all faculty, staff, and students to ride the transit system for free?

A: No. So long as the public transit agency provides the service on a regular basis, along a fixed route, and the service is open to the public, the fact that the university may be subsidizing student and faculty rides, does not convert the service to charter.

(27) Q: Can a transit agency provide service when the customer wants a particular type of equipment such as a (rubber tire) trolley bus, vintage bus, or CNG bus that the private operators do not have?

A: No. Public transit agencies cannot provide charter service solely based on a customer's vehicle preferences. FTA only recognizes two categories of vehicles: buses and vans.

(28) Q: What is a ''qualified human service organization?''

A: A qualified human service organization is an organization that provides service to individuals that qualify for federally conducted or assisted transportation related programs due to disability, income or advanced age. See section 604.3(q).

(29) Q: If a transit agency has restored or preserved historic electric buses for limited, special use, are the buses subjected to charter bus restrictions?

A: Yes, if the public transit agency purchased the historic electric buses with Federal funds or maintains those vehicles in federally funded facilities.

(30) Q: If a grantee operates assets that are locally funded are such assets subject to the charter regulations?

A: It depends. If a recipient receives FTA funds for operating assistance or stores its vehicles in a FTA-funded facility or receives indirect FTA assistance, then the charter regulations apply. The fact that the vehicle was locally funded does not make the recipient exempt from the charter regulations. If both operating and capital funds are locally supplied, then the vehicle is not subject to the charter service regulations.

(31) Q: Does ''pattern of violations'' apply from the effective date of the final rule?

A: Yes. The new definition of pattern of violations applies from the effective date of the final rule. In other words, in order to establish a pattern of violations, the violation had to occur after the effective date of the final rule.

(32) Q: What is a violation? Does it require an official charter decision or could it also include an oversight finding or other means of identifying shortcomings?

A: The new rule defines ''violation'' as a finding by FTA of a failure to comply with one of the requirements of this part. A finding may be an official charter decision by the Chief Counsel or the Administrator. An oversight finding would also qualify as an FTA finding.

(33) Q: Are sightseeing trips still not charter?

A: Yes. ''Sightseeing'' is excluded from the definition of ''public transportation'' under 49 U.S.C. Section 5302(a)(10). Therefore, it is not permissible for public transit agencies to provide sightseeing service with FTA-funded assets.

(34) Q: If a transit agency provides vehicles to a special event, but the event is open to the public, the route is controlled by the transit agency, the route is advertised similarly to the transit agency's regular routes, the buses are not identified as ''special service'' or any other different markings, and the vehicles go to and from fixed stops in an express bus manner, is this charter?

A: No. So long as the transit authority does not charge a premium fare for the service and a third party does not pay for the service in whole or in part. Advertising or different markings on the bus are longer determinative of whether the service is charter.

(35) Q: Does FTA consider wait time as a factor, in and of itself, when determining whether service is charter service?

A: No. Wait time is not, in and of itself, considered a characteristic of charter service.

(36) Q: What if there is no ''contract'' under the ''single contract'' factor and the transit agency merely sees a need and provides the charter-type service on its own initiative, is that charter?

A: No. If a transit agency sees a need and wants to provide service for a limited duration at the customary fixed route fare, then that service is not charter service. The existence of a contract is no longer determinative of whether service is charter service.

(d) Exceptions

(37) Q: If the federal government calls on a public transit agency for transit service and it will exceed the proposed 80 hour limitation, are public operators to refuse this service or seek a waiver directly from the federal government?

A: A public transit agency can petition for more service hours if it exceeds the 80 hour annual allowance. Instructions on how to file a petition are more fully described under 49 CFR Section 604.6(c) of the new regulation. Public transit agencies should be mindful that the Administrator will grant such requests under extraordinary circumstances only.

(38) Q: What kind of events qualify for the ''Events of Regional and National Significance'' exception?

A: First, this exception is now located in section 604.11 and is called ''Petitions to the Administrator.'' Second, the exception is designed to allow public transit agencies to participate in providing service to large events that will attract a lot of visitors. Some examples are: the Kentucky Derby, the Indianapolis 500, a bridge opening, or a new transit facility opening. If a transit authority is unsure whether a particular event fits within the exception, the transit authority may request an Advisory Opinion from FTA according to section 604.17.

(39) Q: What should a transit agency do when it is in the process now of planning for an event of regional significance? Will the new rules terminate these plans?

A: The new rule will impact a transit authority's planning process for an event of regional significance. Any service provided by the transit authority after the effective date of the rule—April 30, 2008—is subject to the provisions of the new rule.

(40) Q: What can a public transit agency do if there is a time sensitive event in which the agency does not have time to consult with all the private charter operators in their area? For example, the presidential inauguration.

A: Section 604.11 provides a process to petition the FTA Administrator for permission to provide service for a unique and time sensitive event. A presidential inauguration, however, is not a good example of a unique and time sensitive event. A presidential inauguration is an event with substantial advance planning and a transit agency should have time to contact private operators.

(41) Q: How should a public transit agency handle the situation of a regional or nationally significant event when there is a requirement to plan significant events (e.g., the Super Bowl) many years in advance long before the list of registered charter service providers is compiled?

A: If the transit agency plans to provide service to an event of regional or national significance after the effective date of the rule—April 30, 2008—then that service is subject to the requirements of the new rule.

(42) Q: Does the hardship exception apply to small urban operators?

A: Yes. Under section 604.11, the hardship exception applies to non-urbanized areas under 50,000 in population or a small urbanized area under 200,000 in population.

(e) Notice

(43) Q: May a transit agency indicate in the notice that goes out to registered charter providers that the customer requested specific equipment?

A: No. In terms of type of vehicles, the notice can include whether the customer needs a bus or a van. The registered charter provider, when it contacts the customer will learn of the specific customer needs. At that time, the registered charter provider can determine whether to seek out the specialized equipment from other private charter operators or a public transit agency.

(44) Q: Must a public transit agency provide notice of all potential charter trips to registered charter providers?

A: No. A public transit agency needs to provide notice only for charter trips that it is interested in providing. If an exemption or one of the exceptions applies, then the public transit would, after providing the service, record the service as required by section 604.12.

(45) Q: What does ''notifying private operators'' entail? What actions are to be taken when a notification e-mail is undeliverable? Is it sufficient to provide phone numbers of private operators when people call in for charter service?

A: Only ''registered charter providers'' need to be contacted. In order to qualify as a ''registered charter provider'' the information provided, including contact information, must be valid. If the e-mail is undeliverable, then the notice should be faxed to the registered charter provider. If the public transit agency declines to provide the service to the customer, then they should

refer the customer to the FTA charter registration Web site. It is not necessary to provide the customer with the registered charter provider's phone number if the public transit agency refers the customer to the charter registration Web site.

(46) Q: May a recipient provide service that allows customers to park at a distant location, like a museum, and then have a transit vehicle take them to a sporting event for a fare that is higher than the normal fixed route fare? May a recipient prevent a private charter operator from providing a similar service from the same starting point to the same destination?

A: No. In this case, since the recipient charges a premium fare for the service, it meets the definition of charter. In order to provide the service, the recipient must give notice to registered charter providers in accordance with section 604.14. A recipient may not prevent a private charter operator from providing a similar service. This is true whether or not the private charter operator is registered on the FTA Charter Registration Web site.

(f) Complaint & Investigation Process

(47) Q: May a trade association or other operators that are unable to provide requested charter service have the right to file a complaint under the new rule?

A: Yes. A registered charter operator or its duly authorized representative, who can include a trade association, may file a complaint under section 604.26(a). Under the new rule, a private charter operator that is not registered with FTA's charter registration Web site may not file a complaint.

(48) Q: Is there a time limit for making complaints?

A: Yes. Complaints must be filed within 90 days of the alleged unauthorized charter service.

(49) Q: Are there examples of the likely remedies FTA may impose for a violation of the charter service regulations?

A: Yes. Appendix D contains a matrix of likely remedies that FTA may impose for a violation of the charter service regulations.

(50) Q: When a complaint is filed, who is responsible for arbitration or litigation costs?

A: FTA will pay for the presiding official and the facility for the hearing, if necessary. Each party involved in the litigation is responsible for its own litigation costs.

(51) Q: What affirmative defenses might be available in the complaint process?

A: An affirmative defense to a complaint could state the applicability of one of the exceptions such as 49 CFR Section 604.6 which states that the service that was provided was within the allowable 80 hours of government official service.

(52) Q: May a state waive participation in the complaint proceedings and forward the complaint directly to FTA after initial receipt and review?

A: A state is no longer involved in the complaint process, and, therefore, no waiver is necessary. In order for a complaint to be filed, it must be filed directly with the Office of the Chief Counsel.

(53) Q: What can a transit agency do if it believes that a private provider is not bargaining in good faith with a group and responds to a notice with a price or terms that are not acceptable to that group?

A: If a transit agency believes that a registered charter provider is not bargaining in good faith, the transit agency may file a complaint for removal from FTA's Charter Registration Web site.

(54) Q: What actions can a private charter operator take when it becomes aware of a transit agency's plan to engage in charter service just before the date of the charter?

A: As soon as a registered charter provider becomes aware of an upcoming charter event that it was not contacted about, then it should request an advisory opinion and cease and desist order. If the service has already occurred, then the registered charter provider may file a complaint.

(55) Q: When a registered charter provider indicates that there are no privately owned vehicles available for lease, must the public transit agency investigate independently whether the representation by the registered charter provider is accurate?

A: No. The public transit agency is not required to investigate independently whether the registered charter provider's representation is accurate. Rather, the public transit agency need only confirm that the number of vehicles owned by all registered charter providers in the geographic service area is consistent with the registered charter provider's representation.

(56) Q: Who qualifies as a presiding official, what are the duties, and what other limitations are imposed?

A: A presiding official will have training and/or experience in conducting hearings. More important, the person may not have any conflicts of interest or previous contact with the parties concerning the issue in the proceeding. A presiding official's duties include, but are not limited to, convening a hearing, issuing orders, ruling on motions, and drafting recommended decisions.

(57) Q: What recourse does a transit operator have when a registered charter provider indicates interest in providing the charter service set out in the notice and then does not do so?

A: A transit operator can and should file a complaint for removal against the registered charter provider. This notifies FTA of the registered charter provider's alleged actions. FTA will then investigate the allegations and potentially remove the registered charter provider from the registration list.

(58) Q: Are there any measures to regulate who is considered a registered charter provider? And, are there any penalties for those that register and actually are not in a position to perform the needed services—for example an individual who owns a taxicab.

A: Yes. Through the self-registration process, a registered charter provider certifies that the information it provides on the charter registration Web site is true and accurate. The penalty for providing inaccurate or untrue information is removal from the registration Web site and possibly criminal penalties under 18 U.S.C. 1001.

(59) Q: If a customer hosts a large community event and the public transit agency cannot provide service because of the charter regulations and private operators will not provide service because the payment is not sufficient, is there any alternative means or does the service not get provided at all?

A: A public transit agency may provide the service if, after providing the notice required in section 604.14, no registered charter providers in the transit agency's geographic service area are interested in providing the service.

(60) Q: What will result if a registered charter operator cannot actually provide the service, but responds to a recipient's notice anyway?

A: If a registered charter provider responds to a notice, then it is expected to negotiate in good faith with the customer to provide the service. If a registered charter provider vindictively responds to a notice in order to prevent a public transit agency from providing the service, then that registered charter provider may be subject to a complaint for removal from the charter registration Web site.

(61) Q: What method will the decision maker employ in determining the penalty for violating the charter regulations?

A: Remedies will be based upon the facts of the situation, including but not limited to, the extent of deviation from the regulations and the economic benefit from providing the charter service. See section 604.47 and Appendix D for more details.

(62) Q: Can multiple violations in a single finding stemming from a single complaint constitute a pattern of violations?

A: Yes. A pattern of violations is defined as more than one finding of unauthorized charter service under this part by FTA beginning with the most recent finding of unauthorized charter service and looking back over a period not to exceed 72 months. While a single complaint may contain several violations, the complaint must contain more than a single event that included unauthorized charter service in order to establish a pattern of violations.

(g) Recordkeeping

(63) Q: What if the public transit provider does not have sufficient time to evaluate a request and make sure that all the information is complete before notifying the registered private charter companies?

A: A recipient should wait to provide notice that is consistent with 49 CFR Section 604.14.

(h) Miscellaneous

(64) Q: Are body-on-van-chassis vehicles classified as buses or vans under this provision?

A: Body-on-van-chassis vehicles are treated as vans under the regulation.

(65) Q: Are there adequate provisions to ensure that the registry site will be maintained in such a way that carriers provide evidence of insurance?

A: Registered charter providers are required to certify that they have insurance but are not required to provide evidence of insurance. If there is information that indicates the provider has provided a false certification, then it can be subject to criminal penalties under 18 U.S.C. 1001 and removed from the FTA Charter Registration Web site.

(66) Q: Will the registration Web site be fully functional and grantees receive training on how to use the Web site before the rule's effective date?

A: Yes. The Web site will be fully functional before the rule's effective date. A

training manual will also be distributed before the effective date. FTA intends to also do a roll-out of the regulation prior to the effective date of the final rule.

(67) Q: When a new operator registers, may recipients continue under existing contractual agreements for charter service?

A: Yes. If the contract was signed before the new private operator registered, the arrangement can continue for up to 90 days. During that 90 day period, however, the public transit agency must enter into an agreement with the new registrant. If not, the transit agency must terminate the existing agreement for all registered charter providers.

(68) Q: Do FTA's attorneys have the necessary training to serve as administrative law judges and makes rulings on motions, a task that heretofore has not been a part of the day-to-day activities of regional counsel?

A: Yes. FTA attorneys who have the delegated responsibility to serve as a Presiding Official may rule on motions and will possess the necessary qualifications to carry out their delegated tasks and responsibilities.

(69) Q: Must a public transit agency continue to serve as the lead for events of regional or national significance, if after consultation with all registered charter providers in its geographic service area, registered charter providers have enough vehicles to provide all of the service to the event?

A. No. If after consultation with registered charter providers and there is no need for the public transit vehicles, then the public transit agency may decline to serve as the lead and allow the registered charter providers to work directly with event organizers. Alternatively, the public transit entity may retain the lead and continue to coordinate with event organizers and registered charter providers.

Appendix D to Part 604—Matrix of Remedies for Violations

Remedy Assessment Matrix:

EXTENT OF DEVIATION FROM REGULATORY REQUIREMENTS

	Major	Moderate	Minor
Major Economic Benefit	$25,000/violation to 20,000	$19,999/violation to 15,000	$14,999/violation to 11,000.
Moderate	$10,999/violation to 8,000	$7,999/violation to 5,000	$4,999/violation to 3,000.
Minor	$2,999/violation to 1,500	$1,499/violation to 500	$499/violation to 100.

FTA's Remedy Policy:

—This remedy policy applies to decisions by the Chief Counsel, Presiding Officials, and final determinations by the Administrator.

—Remedy calculation is based on the following elements:

(1) The nature and circumstances of the violation;

(2) The extent and gravity of the violation (''extent of deviation from regulatory requirements'');

(3) The revenue earned (''economic benefit'') by providing the charter service;

(4) The operating budget of the recipient;

(5) Such other matters as justice may require; and

(6) Whether a recipient provided service described in a cease and desist order after issuance of such order by the Chief Counsel.

Issued this 7th day of January, 2008.

James S. Simpson,

Administrator.

[FR Doc. 08–86 Filed 1–8–08; 4:36 pm]

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Federal Register

Monday,
January 14, 2008

Part IV

Federal Deposit Insurance Corporation

12 CFR Part 360

Processing of Deposit Accounts in the Event of an Insured Depository Institution Failure and Large-Bank Deposit Insurance Determination Modernization; Proposed Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AD26

Processing of Deposit Accounts in the Event of an Insured Depository Institution Failure and Large-Bank Deposit Insurance Determination Modernization

AGENCY: Federal Deposit Insurance Corporation (''FDIC'').

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is seeking comment on a proposed rule composed of two parts. The first part would establish the FDIC's practice for determining deposit account balances at a failed insured depository institution. The second part would require the largest insured depository institutions to adopt mechanisms that would, in the event of the institution's failure: provide the FDIC with standard deposit account and customer information; and allow the FDIC to place and release holds on liability accounts, including deposits. The first part of the proposal would apply to *all* insured depository institutions. The second part of the proposal would apply only to insured depository institutions having at least $2 billion in domestic deposits and either: more than 250,000 deposit accounts (currently 152 institutions); or total assets over $20 billion, regardless of the number of deposit accounts (currently 7 institutions). The FDIC is seeking comment on all aspects of the proposed rule.

DATES: Comments must be submitted on or before April 14, 2008.

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

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include ''Processing of Deposit Accounts and Insurance Determination Modernization'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: James Marino, Project Manager, Division of Resolutions and Receiverships, (202) 898–7151 or *jmarino@fdic.gov,* Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898–7349 or *jdinuzzo@fdic.gov,* Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839 or *chencke@fdic.gov* or Catherine Ribnick, Counsel, Legal Division, (703) 562–2407 or *cribnick@fdic.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule comprises two parts. The first part would establish the FDIC's practice for determining deposit account balances at a failed insured depository institution.[1] The second part would require the largest insured depository institutions to adopt systems that would, in the event of the institution's failure: (1) Provide the FDIC with standard deposit account and customer information; and (2) allow the FDIC to place and release holds on liability accounts, including deposits.

I. Determining Deposit Account Balances at a Failed Insured Depository Institution

A. Background

Upon the failure of an FDIC-insured depository institution, the FDIC must determine the total insured amount for each depositor. 12 U.S.C. 1821(f). To make this determination, the FDIC must ascertain the balances of all deposit accounts owned by the same depositor in the same ownership capacity at a failed institution as of the day of failure.

The second part of this proposed rule, among other things, would require certain large depository institutions to place holds on liability accounts, including deposits, in the event of failure. The amount held would vary depending on the account balance, the nature of the liability (whether it is a deposit or non-deposit for insurance purposes) and the expected losses resulting from the failure. In order to calculate these hold amounts, the rules used by the FDIC to determine account balances as of the day of failure must be clearly established.

A deposit account balance can be affected by transactions[2] presented during the day. A customer, a third party or the depository institution can initiate a deposit account transaction. All depository institutions process and post these deposit account transactions according to a predetermined set of rules to determine whether to include a deposit account transaction either in that day's close-of-business balances or in the next day's close-of-business balances. These rules establish cutoff times that vary by institution and by type of deposit account transaction—for example, check clearing, Fedwire, ATM, and teller transactions. Institutions post transactions initiated before the respective cutoff time as part of that day's business and generally post transactions initiated after the cutoff time the following business day. Further, institutions automatically execute prearranged ''sweep'' instructions affecting deposit balances at various points throughout the day. The cutoff rules for posting deposit account transactions and the prearranged automated instructions define the close-of-business balance for each deposit account on any given business day.[3]

In the past, the FDIC usually took over an institution as receiver after it had closed on a Friday. For institutions with a few branches in one state, deposit account transactions for the day were completed and determining account balances on that day was relatively straightforward. The growth of interstate banking and branching over the past two decades and the increasing complexity of bank products and practices (such as sweep accounts) has made the determination of account balances on the day of closing much more complicated. Financial institutions are much larger and the industry is more concentrated than in the past, factors further complicating the determination.

[1] Part one imposes no requirements on insured depository institutions, rather it only establishes the FDIC's practices for determining deposit account balances in the event of failure.

[2] A deposit account transaction, such as deposits, withdrawals, transfers and payments, causes funds to be debited from or credited to the account.

[3] Some depository institutions operate ''real-time'' deposit systems in which some deposit account transactions are posted throughout the business day. Most depository institutions, however, process deposits in a ''batch mode,'' where deposit account transactions presented before the cutoff time are posted that evening or in the early morning hours of the following day. With either system—batch or real-time—the institution calculates a close-of-business deposit balance for each deposit account on each business day.

B. The proposed rule

Overview

In general. The FDIC makes deposit insurance determinations based upon deposit account balances at a failed institution on the day of failure. The proposed rule would define what is meant by a deposit account balance on the day an insured depository institution fails and, thus, would define the deposit account balances on which the FDIC would make insurance determinations. A deposit account balance on the day of failure would be defined as the end-of-day *ledger* balance of the deposit on the day of failure. Whether a deposit account transaction would be included in the end-of-day ledger balance on the day of failure would depend generally upon how it normally would be treated using the institution's ordinary cutoff time on that day. As mentioned above, many institutions have different cutoff times for different kinds of transactions, such as check clearing, Fed wire, ATM and teller transactions.

Under the proposed rule, the FDIC would establish the FDIC Cutoff Point, defined as a point in time after it takes control of the failed institution as receiver. If the institution's ordinary cutoff time on the day of failure *for any particular kind of transaction* preceded the FDIC Cutoff Point, the institution's ordinary cutoff time would be used. Otherwise, the institution's ordinary cutoff time for an individual kind of transaction would be replaced by the FDIC Cutoff Point. The ''Applicable Cutoff Time'' used for any kind of transaction thus would be the earlier of the institution's ordinary cutoff time or the FDIC Cutoff Point. In practice, there might be several Applicable Cutoff Times for a given failed institution, since different kinds of transactions could have different cutoff times. No Applicable Cutoff Time would be later than the FDIC Cutoff Point established by the FDIC, though some could be earlier.

Transactions occurring after the Applicable Cutoff Time would be posted to the next day's business, if the operations of the failed institution were carried on by a successor institution. In a depository institution failure where deposit operations are not continued by a successor institution, account transactions on the day of failure would be posted to the applicable deposit accounts until the FDIC takes control of the institution as receiver. This practice would be consistent with the FDIC's current practice in handling deposit account transactions in deposit insurance *payout* situations.[4]

Upon taking control of a failed institution as receiver, the FDIC would take steps necessary to limit additional transactions to ensure, to the extent practicable, that funds would not be received by or removed from the failed institution. These steps might include the suspension of wire activities and new deposit account transactions. For example, wire transactions not yet executed by the FDIC Cutoff Point would not be allowed to occur.

For a failed institution operating in several time zones, the FDIC Cutoff Point, which would set the latest possible time for any particular transaction's Applicable Cutoff Time, would be translated into local time. For example, a 6 p.m. Eastern Time FDIC Cutoff Point on the day an institution was closed would mean a 5 p.m. FDIC Cutoff Point in the Central Time zone. As receiver, the FDIC would attempt, as it has customarily done in the past, to close all offices of the failed institution as soon as practicable after taking over as receiver.

To illustrate the Applicable Cutoff Time, consider an institution whose normal cutoff time for teller transactions is 3 p.m. local time. Assume that the institution has branches in both the Eastern and Pacific Time zones. Assume also that the FDIC designates 5 p.m. Eastern Time as the FDIC Cutoff Point. The Applicable Cutoff Time for teller transactions would then be 3 p.m. Eastern Time for branches in the east and 2 p.m. Pacific Time for branches in the west. Thus, a deposit made at a teller station at a branch in the west at 1 p.m. local time would be posted to (and included in) the end-of-day ledger balance on the day of failure. A deposit made at a teller station at a branch in the west at 2:30 p.m. local time (assuming that the FDIC could not immediately close the branch) would not be posted to (or included in) the end-of-day ledger balance on the day of failure. Instead, the deposit would be included in the next day's business, unless no successor institution continued the operations of the failed institution, in which case it would either be included in the day-of-failure's business or returned. The deposit insurance implications of including or not including the deposit in the end-of-day ledger balance on the day of failure are discussed below.

Prearranged instructions to ''sweep'' funds after the posting process. Certain account agreements, such as those applying to *zero balance accounts*[5] and other internal sweep accounts,[6] provide for the automated transfer from one account at an institution to another account at the institution after transactions are posted for the day, but before the end-of-day balance is established. Applicable contracts and business rules governing these accounts determine the amount to be transferred. Under the proposed rule, any automated internal sweep transaction from one account at the failed institution to another account at the failed institution would be completed on the day of failure.[7] In effect, the FDIC, as receiver would recognize the transfer, pursuant to the account agreement, in determining the end-of-day balance for deposit insurance and depositor preference purposes. The completion of prearranged internal sweep transactions results in the calculation of end-of-day deposit balances for insurance purposes consistent with how such funds currently are treated for Call Report and assessment purposes.

[4] This is when the FDIC handles the resolution of a failed depository institutions by making payments to insured depositors. More commonly, the FDIC handles a failed institution by arranging a purchase-and-assumption transaction with a healthy depository institution. In those cases, insured depositors' funds are transferred to the assuming institution and available at that institution to depositors.

[5] In the case of a zero balance account ordinarily a customer has a master account tied to one or more subsidiary accounts. The institution's agreement with the customer calls for the subsidiary account to have a zero balance at the end of each day. For example, if funds need to be transferred from the master account to cover checks presented against the subsidiary account, this will be done during the nightly processing cycle. Alternatively, if there are excess funds in the subsidiary account they will be transferred to the master account prior to the end of the day.

[6] Insured depository institutions maintain two types of sweep accounts. Internal sweep arrangements—such as those where the investment vehicle is a ''deposit'' in a foreign branch of the institution or its international banking facility—sweep funds only within the institution itself by accounting or bookkeeping entries. External sweep arrangements—such as those connected to investments in money market mutual funds—move funds (usually by wire transfer) outside the institution and, hence, off its books altogether.

[7] The FDIC as receiver would not, however, complete an external sweep—a sweep in which funds leave the institution and another entity assumes liability to the customer—if funds have not already left the failed institution by the FDIC general cutoff time. An external sweep includes, for example, an account where funds are swept from a deposit account at the institution and wired to a third party money market mutual fund every evening. External sweeps also would include an arrangement where funds are swept from a deposit account at a depository institution to an account or product at an affiliate of the institution, even if the transfer is accomplished through a book-entry at the depository institution. In some cases it would not be practicable to stop an external sweep from occurring after the FDIC general cutoff time. In these cases the FDIC would use the pre-sweep deposit balance for insurance purposes.

For example, assume an agreement between a depository institution and its customer provides that, at the close of every business day, the funds in excess of a designated amount are to be transferred from the customer's checking account at the institution's domestic branch to a Eurodollar account at the institution's foreign branch. Under the proposed rule, the transfer of funds to the foreign branch would be deemed to have been completed on the day of failure, regardless of the FDIC Cutoff Point, because the transfer was authorized as of that day as part of the agreement between the institution and its customer.

The proposed treatment of internal zero balance and other sweep accounts has important implications for a customer's depositor and creditor status and chances of recovery from the receivership estate. The implications are discussed below.

Post-closing adjustments. Under the proposed rule, the FDIC, as receiver, would be able to correct errors and omissions after the day of failure and reflect them in the day-of-closing deposit account balances.

No requirements proposed. The proposed rule would not require insured institutions to have in place computer systems capable of applying the FDIC Cutoff Point to determine deposit account balances upon an institution's day of failure. The FDIC requests comments on whether such a requirement should be imposed for either all institutions or, alternatively, for ''Covered Institutions''—defined in the second part of the proposed rule as institutions having at least $2 billion in domestic deposits and either: more than 250,000 deposit accounts; or total assets over $20 billion, regardless of the number of deposit accounts.

Treatment of Uncollected Deposited Checks

Under the proposed rule, in determining deposit account balances at a failed insured depository institution, the FDIC would deem all checks deposited into and posted to a deposit account by the Applicable Cutoff Time as part of the deposit account balance for insurance purposes. This approach means that the FDIC would use the ''ledger balance'' of the account for purposes of its deposit insurance determination, in contrast to using either ''available funds'' or ''collected funds'' account balances.

The FDIC proposes to use deposit account ledger balances for deposit insurance purposes for several reasons:

- Depository institutions use and calculate the ledger balance in a more consistent way than other balances.
- It is consistent with the way that depository institutions report deposits on Call Reports and Thrift Financial Reports and it is the balance the FDIC uses to determine an institution's deposit base for calculating the institution's deposit insurance assessments.[8]
- It is the easiest balance for depositors to understand, and it is the most frequently used balance on financial statements provided to customers.

Using ledger balances also is consistent with the definition of ''deposit'' in the Federal Deposit Insurance Act (''FDI Act''), which includes balances both ''conditionally'' or ''unconditionally'' credited to a deposit account. 12 U.S.C. 1813(l).

Further, especially in a large depository institution failure, using ledger balances may be the only operationally feasible means for the FDIC to make deposit insurance determinations timely and expeditiously. As discussed in more detail in the second part of this rulemaking, the FDIC is statutorily obligated to pay insured deposits ''as soon as possible'' after an insured depository institution fails. 12 U.S.C. 1821(f)(1). The FDIC places a high priority on providing access to insured deposits promptly and, in the past, has usually been able to allow most depositors access to their deposits on the business day following closing. The largest insured institutions are much bigger than any institution has been in the past and are growing increasingly complex. Providing prompt access to depositors if one of these institutions were to fail would prove difficult if adjustments for uncollected funds were necessary.

The proposed rule differs from the FDIC's past and current practice in an important way. In the past, for a check that was posted to an account but not yet collected at the time of failure—including a check already forwarded by the failed institution for collection but not yet collected—the FDIC acted as agent or trustee for the depositor and remitted or credited payments received on these checks to the depositor in full. These checks were not included in deposits on the day of failure for insurance purposes and were not subject to deposit insurance limits.[9] In contrast, under the proposed rule, when a check is posted to an account at the failed institution as provided by the Applicable Cutoff Time, the check would be included in the end-of-day balance and would be subject to deposit insurance limits, even if uncollected.[10]

To illustrate, assume again that the FDIC Cutoff Point for teller transactions at a failed institution is 2 p.m. Pacific Time for branches in the west. In the past, the receiver, as agent or trustee, would collect any deposit made to the account (whether before or after 2 p.m. local time) that was uncollected on the day of failure and credit or remit the proceeds to the depositor without regard to insurance limits. The amount of the checks would not have counted against the depositor's deposit total for insurance purposes. Under the proposed rule, however, any deposit made at a teller station at a branch in the west up to 2 p.m. local time (possibly including deposits made in previous days) would be included in the end-of-day ledger balance on the day of failure (unless previously withdrawn by the depositor). If such a deposit caused the depositor's total deposits to exceed the maximum deposit insurance amount for that ownership capacity, the depositor would have uninsured deposits.

Some depositors may receive less favorable treatment under the proposed rule than if the FDIC were to continue to use its current approach to handling uncollected deposited checks. The increasing speed with which checks are processed as a result of electronic check processing, the use of checking account debit cards and other developments, however, should limit the effect of the proposed rule in this regard. Moreover, the current approach would not be feasible in a larger bank failure, and the FDIC must plan for all contingencies.

Treatment of Internal Sweep Accounts in General

Background. In a prearranged, internal sweep arrangement, the nature of an institution's liability to its customer changes automatically and repeatedly (usually once or twice every

[8] The FDIC's recent revisions to the FDIC's risk-based assessment system have made an institution's assessment base, which is used to determine its deposit insurance assessment, virtually identical with an institution's deposits as defined in the Federal Deposit Insurance Act. The revisions eliminated the ''float'' deductions previously used to compute an institution's assessment base; hence, deposits posted to a deposit account but not yet collected are now part of the assessment base. The stated rationale for eliminating the float deduction from the calculation of an institution's assessment base was that such deductions were small and decreasing as a result of legal, technological and system payment changes. 71 FR 69720 (Nov. 30, 2006).

[9] FDIC Adv. Op. 95–2 (Jan. 23, 1995).

[10] If the check ultimately proved to be uncollectible, the ledger balance would be adjusted accordingly.

day). Usually, some or all of the funds in an obligation denominated a deposit account (typically, a checking account) are transferred to a non-deposit liability account within the same depository institution (an ''internal sweep''). For many such internal sweeps (such as sweeps to Eurodollar accounts, discussed below), funds do not usually transfer; rather, a ledger or accounting entry is used to record that the obligation has moved to another type of account.

Most agreements between sweep customers and a depository institution expressly provide that the institution's liability, once the sweep occurs, is not a *deposit* (as defined in section 3(l) of the FDI Act) and that the institution will pay interest (typically overnight) while the liability remains a non-deposit liability. These sweep agreements allow an institution to pay interest without violating the statutory prohibition on the payment of interest on demand deposits.[11] These sweep agreements also relieve insured institutions from having to maintain reserve requirements for the swept liabilities under the regulations issued by the Board of Governors of the Federal Reserve System.[12] In addition, the agreements relieve institutions from having to pay deposit insurance assessments (or premiums) on the swept liabilities, since only deposits are included in the base upon which institutions pay assessments.[13]

The Adagio decision. The need for a rule to govern the treatment of internal sweep accounts in an institution failure is motivated, in part, by a recent court decision involving the treatment of sweep accounts. In *Adagio Investment Holding Ltd.* v. *FDIC*, 338 F. Supp. 2d 71 (D.D.C. 2004), the FDIC was appointed as the receiver of the failed Connecticut Bank of Commerce. On the night of the bank's failure, in accordance with its customary practice, the FDIC ''completed the day's business'' which involved processing pending transactions, including approximately $20.2 million which had been authorized to be swept from a demand deposit account in the bank to a non-insured non-deposit account in the bank's international banking facility (''IBF''). Because ''deposits'' in an IBF are not deposits for purposes of section 3(l) of the FDI Act, the FDIC issued (pursuant to the national deposit preference statute, described below) the holders of these ''deposits'' receivership certificates as general creditors rather than according them priority status as depositors. The creditors, claiming that the receiver did not have authority to permit the sweeps, sued the FDIC. In the *Adagio* case, the court concluded that the sweep should not have been performed in light of the lack of ''any provision in either the statute or regulations that would permit the sweep that occurred.* * *'' 338 F. Supp. 2d at 81.

Operation of the proposed rule as to sweeps. Under the proposed rule, the FDIC would complete a prearranged internal sweep transaction on the day of the institution's failure if the applicable sweep account agreement provides for the automated sweep after transactions are posted for the day, but before the final deposit account balance is established.

As in the *Adagio* situation, a sweep that resulted in a non-deposit liability would leave the creditor with an unsecured general creditor claim against the receivership. This is because under the national deposit preference statute (section 11(d)(11) of the FDI Act, 12 U.S.C. 1821(d)(11)), unsecured general creditor claims receive payment from the receivership estate only after all deposit claims, including uninsured deposits and the FDIC's claim as the subrogee of all insured deposits, have been paid in full. As a result, general creditors often receive little or no recovery in the receivership of a failed depository institution, while uninsured depositors have historically recovered at least part of their funds. Thus, the sweep of a liability from a deposit account to a non-deposit account (on the day of the institution's failure) could significantly reduce the accountholder's recovery from the receivership estate.

Customers could either lose or gain from having internal sweeps completed. Eurodollar sweeps and sweeps to IBF accounts are two examples of internal sweep arrangements that would result in customers losing due to the sweep being completed. The Eurodollar and IBF sweep arrangement typically begins each business day with balances only in a domestic deposit account. At the end of the day, the customer's claim is denominated a Eurodollar account (typically associated with the bank's branch in the Cayman Islands or Bahamas) or an IBF account. At the start of the next business day, the depository institution will sweep the balance back to the domestic deposit account. The cycle typically repeats itself daily.

Usually the underlying contract for a Eurodollar sweep specifies that the obligation at the foreign branch is not payable in the United States and, hence, is not a *deposit,*[14] for deposit insurance and depositor preference purposes. Upon an institution failure, amounts in a Eurodollar account in a non-insured branch of the failed institution would be treated as foreign deposits and would not be deposits for insurance or depositor preference purposes. The same treatment would apply to sweeps to IBFs, which by statutory definition are not deposits. Eurodollar and IBF accountholders would be accorded general creditor status in the receivership estate. Institutions do not pay deposit insurance assessments on liabilities denominated, as of an institution's close of business, as foreign deposits or IBF deposits.

Thus, under the proposed rule, the sweep to the IBF described in the Adagio decision would be completed by the receiver on the day of failure and the account holders, who held IBF accounts after the sweep, would be deemed to be general creditors of the receivership, rather than depositors, under the deposit preference statute.[15]

Completing repurchase agreement sweeps could—if the accounts are properly structured—benefit the customer. In a repurchase sweep, the process is similar to that of a Eurodollar or IBF sweep. At the start of the business day, the customer balances reside in a deposit account. At some point during the day the obligation is changed to an interest-bearing, non-deposit liability account, and is so reported by the institution as of the close of business. In some cases, the institution sells securities to the customer (and agrees to repurchase them later). At the start of the next business day, the depository institution will repurchase the securities by re-crediting the deposit account. The cycle repeats itself daily.

Under the proposed rule, internal repurchase account sweeps would be

[11] In general, insured depository institutions are prohibited from paying interest on commercial demand deposits. *See* 12 U.S.C. 371a; 12 U.S.C. 1828(g); 12 CFR part 217; 12 CFR part 329.

[12] 12 CFR Part 204.

[13] 12 CFR 327.5.

[14] The definition of ''deposit'' in the FDI Act expressly excludes: ''any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless (i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at an office located in any State; and (ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State.'' 12 U.S.C. 1813(l)(5)(A). Also, the FDI Act defines IBF obligations as non-deposits. 12 U.S.C. 1813(l)(5)(B).

[15] Rights are fixed as of the close of the day's business. Those rights would not be changed if, for example, it was impractical to reprogram the bank's computers before a liability swept to a foreign branch of an insured institution as of the day of the institution's failure was swept back to a deposit account at the bridge bank serving as the successor to the failed institution.

accorded the same treatment as other pre-arranged, automated sweep arrangements. That is, the FDIC would consider sweep transactions to be completed on the day of the institution's failure if the applicable sweep account agreement provides for the automated sweep before the final deposit account balance is established.

Some repurchase sweep agreements provide for an actual sale of securities by the depository institution to a customer (followed by the institution's ''repurchase'' of the securities from the customer). When the customer uses a deposit account to make the purchase, the bank's deposit liability to the customer is extinguished. In other cases, however, the so-called repurchase agreement does not provide for the actual sale and repurchase of securities. Rather, the agreement provides for the transfer of the customer's claim from a deposit account at the depository institution to another liability account, collateralized by either specific securities or a pool of securities, at the same institution. In this regard, the FDIC seeks comment on specific questions: Do some or all repurchase arrangements as actually executed: (1) Pass title to the customer in a transaction that is enforceable against the FDIC? or (2) create perfected security interests that are enforceable against the FDIC? Comments also are requested as to whether the nature of some or all repurchase sweep arrangements satisfies the definition of ''deposit'' in section 3(l) of the FDI Act. In addition, comments are requested as to what arguments may be made that repurchase arrangements in which the institution collateralizes its liability are permissible, given restrictions on collateralizing private deposits. *See Texas & Pacific Railway Company* v. *Pottorff*, 291 U.S. 245 (1934).

Treatment of Sweep Accounts Involving the Transfer of Funds Outside the Depository Institution

The proposed rule would apply differently to sweep accounts involving the transfer of funds outside the depository institution. In those situations, the status of the funds as of the institution's day of failure would depend on whether the funds left the institution (via wire transfer or otherwise) before the FDIC Cutoff Point. For example, assume the customer and the institution have an agreement that funds in excess of a certain amount are to be wired to a mutual fund (outside the institution) at 5 p.m. each business day. The institution fails and the FDIC Cutoff Point is set at 4 p.m. If the funds have not been wired out of the institution by 4 p.m., the FDIC would consider the funds to be part of the deposit account balance upon which the FDIC would make a deposit insurance determination. Conversely, under the same facts, except that the FDIC Cutoff Point is set at 6 p.m., the wire transfer would be executed at 5 p.m., and the wired funds would no longer be part of the deposit account balance upon which the FDIC would make a deposit insurance determination.

Where funds subject to a prearranged, automated external sweep have been temporarily transferred to an intermediate deposit account (or omnibus account) at the failed institution awaiting transfer to an external source, but have not actually been transferred to the external source (for example, the mutual fund) by the FDIC Cutoff Point, those funds would still be considered part of the customer's deposit account balance for deposit insurance and receivership purposes.

External sweep arrangements typically provide that invested funds remain outside the institution on a day-to-day basis. In this regard, at the point of failure the preponderance of a customer's funds would reside in the external sweep investment vehicle and not be considered a deposit for Call Report, assessment or insurance purposes. Such external funds typically would not be subject to loss in the event of failure. The proposed rule would affect only those balances leaving the institution on the day of failure. Thus, the proposed treatment of external sweep arrangements is consistent with the FDIC's practice, upon taking control of a failed institution as receiver, to limit the removal of funds from the failed institution.

Request for comment on sweeps alternative. As described above, funds subject to an internal sweep that is to take place before end-of-day balances are calculated would not be accorded treatment as deposits because they would be swept, within the depository institution, by prearrangement, before the institution's close of business, from a deposit to a non-deposit account. Under such an arrangement, no deposit insurance premiums would have been assessed against these funds since they would not have been reported as deposits by the institution. The FDIC requests comments on whether, if the swept funds in such arrangements were to be assessed insurance premiums, they also should be eligible to be treated as deposits for purposes of FDIC deposit insurance and depositor preference. The FDIC requests comment on whether or to what extent such an option would involve any operational or regulatory burden or other adverse regulatory consequences.

Request for Comment on Part One of the Proposed Rule

In addition to requesting responses to the specific questions posed above and requesting comments on all aspects of this part of the proposed rulemaking, the FDIC requests comments on alternative approaches for determining deposit account balances at a failed insured depository institution, including whether the FDIC should have the discretion to establish a universal cut-off time for such determinations at the time it takes control of a failed insured depository institution.

II—Large-Bank Deposit Insurance Determination Modernization

As mentioned above, the second part of the proposed rule would require the largest insured depository institutions to adopt mechanisms that would, in the event of the institution's failure: (1) Provide the FDIC with standard deposit account and customer information and (2) allow the placement and release of holds on liability accounts, including deposits.

A. Overview

This part of the proposed rule applies to large FDIC-insured institutions, defined in the proposed rule as ''Covered Institutions.'' The definition would encompass insured depository institutions having at least $2 billion in domestic deposits and at least either: (1) 250,000 deposit accounts; or (2) $20 billion in total assets, regardless of the number of deposit accounts. Currently, the combined total number of *Covered Institutions* would be 159.[16] In summary, *Covered Institutions* would be required to adopt mechanisms that would, in the event of the institution's failure:

- Allow automatic posting of provisional holds on large liability accounts in any percentage specified by the FDIC on the day of failure.
- Provide the FDIC with deposit and customer account data in a standard format.
- Allow automatic removal of the provisional holds and posting of the results of insurance determinations as specified by the FDIC.

B. Need for a Rule

When handling a depository institution failure the FDIC is required to structure the least costly of all possible resolution transactions, except

[16] Based upon Call Reports dated June 30, 2007.

in the event of systemic risk.[17] In addition, the FDIC is required to pay insured deposits ''as soon as possible'' after an institution fails.[18] The FDIC places a high priority on providing access to insured deposits promptly and, in the past, has usually been able to allow most depositors access to their deposits on the business day following closing. Doing so enables the FDIC to: (1) Maintain public confidence in the banking industry and the FDIC; (2) provide the best possible service to insured depositors by minimizing uncertainty about their status and avoiding costly disruptions that may limit their ability to meet financial obligations; (3) mitigate the spillover effects of a failure, such as risks to the payments system, problems stemming from depositor illiquidity and a substantial reduction in credit availability; and (4) retain, where feasible, the franchise value of the failed institution (and thus minimize the FDIC's resolution costs).

The largest insured depository institutions are growing increasingly complex. The proposed rule would help facilitate an insurance determination and dramatically improve upon access to depositor funds if one of these institutions were to fail. The proposed rule is intended to allow the deposit operations of a failed institution to be continued on the day following failure. It is also intended to permit the FDIC to meet its legal mandates regarding the resolution of failed insured institutions, provide liquidity to depositors promptly, enhance market discipline, ensure equitable treatment of depositors at different institutions and reduce the FDIC's costs by preserving the franchise value of a failed institution.

Limitations of current processes. Making deposit insurance determinations is inherently complex because a single depositor may have more than one account and may hold accounts in different ownership capacities, each of which may be separately insured.[19] To make insurance determinations, the FDIC must aggregate all accounts owned by a depositor in a single ownership capacity. This process often requires reviewing detailed account agreements and other documents.

The larger the *number* of deposit accounts at an institution, the more complex and difficult the insurance determination becomes. Complexity also depends upon the *volume* of transactions, the amount of uninsured funds, the number of separate computer systems or ''platforms'' on which deposit accounts are maintained and the speed at which the institution's deposit operations must be resumed following failure. These factors all present significant challenges in a large-bank failure.

All of the insured institution failures using the FDIC's current processes and procedures have been of modest size, the largest being NetBank (2007) with total deposits at the time of closure of $1.9 billion and roughly 175,000 deposit accounts. With this proposed rule, the FDIC's processes and procedures for determining deposit insurance coverage would be improved to avoid delays.

Table 1 reflects the increasing number of deposit accounts at the largest insured institutions over the past 10 years. If this trend continues, the largest institutions will hold even more deposit accounts in the future.

TABLE 1.—TOP TEN INSTITUTIONS, BY NUMBER OF DEPOSIT ACCOUNTS

(In Millions)

Rank	1997	2002	2007
1	11.3	27.9	54.0
2	10.4	17.3	33.9
3	5.0	11.1	24.1
4	4.1	10.7	20.5
5	4.0	10.4	19.4
6	3.8	10.0	16.2
7	3.7	9.0	12.7
8	3.7	6.8	9.5
9	3.6	6.0	9.4
10	3.2	5.1	7.2
Total	52.7	114.3	206.8

In most instances, larger institutions are considerably more complex, have more deposit accounts, are more geographically dispersed and have more diverse systems and data-integration issues than small institutions. This is especially true of large institutions that have engaged in merger activity.

Table 2 shows some of the differences between *Covered Institutions* under the proposed rule, and all other institutions (*Non-Covered Institutions*). By definition, *Covered Institutions* typically have more accounts than other institutions. *Covered Institutions* also usually have more complex deposit systems and require a rapid resumption of deposit operations in the event of failure to protect the institution's franchise value.

TABLE 2.—INDUSTRY SEGMENTATION

Segment	Definition	Number	% of Total	Total domestic deposits (billions)	% of Total
Covered	Total domestic deposits of at least $2 billion with: (1) over 250,000 deposit accounts or (2) total assets over $20 billion but less than 250,000 deposit accounts.	159	1.8	4,612	68.9
Non-Covered	All insured institutions not Covered	8,466	98.2	2,086	31.1
Total		8,625	100.0	6,698	100.0

Note: Data are as of June 30, 2007.

[17] Section 13(c)(4)(A)(ii) of the FDI Act, 12 U.S.C. 1823(c)(4)(A)(ii), and section 13(c)(4)(G)(i) of the FDI Act, 12 U.S.C. 1823(c)(4)(G)(i).

[18] Section 11(f)(1) of the FDI Act, 12 U.S.C. 1821(f)(1).

[19] The basic FDIC insurance limit is $100,000 per depositor, per insured institution, although the insurance limit for Individual Retirement Accounts and other specified types of retirement accounts was recently increased to $250,000. 71 FR 14629, March 23, 2006. Deposits maintained by a person or entity in different ownership rights and capacities at one institution are aggregated and separately insured up to the insurance limit. All types of deposits (for example, checking accounts, savings accounts, certificates of deposit, interest checks and cashier's checks) held by a depositor in the same ownership category at an institution are added together before the FDIC applies the insurance limit for that category. Today the FDIC generally relies upon the deposit account records of a failed institution in making a deposit insurance determination. The FDIC's rules and regulations for deposit insurance coverage describe the categories of ownership rights and capacities eligible for separate insurance coverage. FDIC refers to these as ''ownership categories.'' Addendum 1 describes the main ownership categories.

Even when a smaller institution fails, making insurance determinations is a time consuming process. The FDIC typically needs several months of advance planning to make deposits available to insured depositors on the next business day. In the past, insured institution closures typically have occurred on a Friday, which has allowed the FDIC two days to prepare for the next business day. But Friday closures are not always the case and the FDIC must be prepared for all contingencies.

Previous ANPRs. In 2005, the FDIC published an advance notice of proposed rulemaking (the 2005 ANPR),[20] which requested comment on three options for enhancing the speed at which depositors at larger, more complex insured institutions would receive access to their funds in the event of failure.[21] All of the options would have required that *Covered Institutions* modify their deposit account systems. Option 1 would have imposed requirements very similar to those in this proposed rule, except that, in addition, institutions would have been required to maintain a unique identifier for each depositor and for the insurance ownership category of each account.

Option 2 was similar to Option 1 except that the standard data set would have included only information that institutions currently possessed. The option would not have required institutions to create a unique identifier for each depositor or to classify each account by ownership category, similar to the requirements in this proposed rule.

Option 3 was to require the largest ten or twenty insured institutions (in terms of the number of deposit accounts) to know the insurance status of their depositors and to be able to deduct expected losses from uninsured deposit accounts in the event of failure.

Sixty-four percent of the 28 comment letters on the 2005 ANPR opposed the proposal, citing high costs and regulatory burden.[22]

In response, the FDIC published a second advance notice of proposed rulemaking (the 2006 ANPR)[23] focusing on the less costly and burdensome alternatives. The 2006 ANPR proposed dividing *Covered Institutions* into two tiers. Tier 1 institutions would comprise the largest, most complex *Covered Institutions*. The Tier 1 proposed requirements were the same as the Option 1 requirements under the 2005 ANPR, except that the deposit insurance category would not be required for each deposit account. Tier 2 institutions—the remainder of *Covered Institutions*—would have the same requirements as Tier 1, except that there would not be a unique depositor ID requirement.

The comment letters from the trade associations nevertheless still cited high costs and regulatory burden and argued that the benefits to the FDIC would be low and might never materialize.[24] These letters suggested that the FDIC should conduct more research on the costs of the options and the potential benefits. It was recommended that the FDIC focus on troubled institutions or abandon the initiative altogether.[25]

In response, the FDIC has further reduced the potential costs and burdens in this NPR by dropping the requirement that the largest, most complex *Covered Institutions* provide a unique identifier for each depositor. The FDIC's has striven to limit costs and burdens as much as possible while still maintaining the proposed capability for resolving failed institutions at the least cost and providing depositors prompt access to funds.

In each ANPR the FDIC requested comment on other alternatives allowing it to meet its objectives in a less costly or burdensome manner. No alternative strategies have been proposed. Some trade organizations proposed delaying implementation of these requirements until a *Covered Institution* becomes troubled. Given the technological complexity of making funds available quickly and the risk that a *Covered Institution* could fail with limited warning, this proposal is not compatible with the FDIC's obligation to be prepared for a large-bank failure.

In response to the 2006 ANPR, the Board of Governors of the Federal Reserve System noted that the options reduced the likelihood of a too-big-to-fail resolution structure, promoted market discipline, lowered resolution costs and should be in place and tested before a large institution becomes troubled. The Federal Reserve Bank of Minneapolis also argued that the FDIC must revamp its systems for determining insurance at large institutions, should work with the industry to minimize the costs of the proposed options (but still ensure they meet the FDIC's objectives) and should not wait to implement the options until a bank becomes troubled.[26] The FDIC agrees.

C. The Proposed Rule

Use of the terms ''deposit,'' ''foreign deposit'' and ''international banking facility deposit.''

In this part of the proposed rule, the term ''deposit'' continues to be used as defined in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)). A deposit—also called a ''domestic deposit''—includes only deposit liabilities payable in the United States, typically those deposits maintained in a domestic office of an insured depository institution. Insured depository institutions may maintain deposit liabilities in a foreign branch (''foreign deposits''), but these liabilities are not deposits in the statutory sense (for insurance or depositor preference purposes) for the time that they are payable solely at a foreign branch or branches. Insured depository institutions also may maintain deposit liabilities in an international banking facility (IBF). An ''international banking facility deposit,'' as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)), also is not a deposit for insurance purposes under section 3(l) or depositor preference purposes.

Definition of Institutions Covered

This part of the proposed rule would apply to a *Covered Institution*, which would be defined as any insured depository institution having at least $2 billion in domestic deposits and at least either: (1) 250,000 deposit accounts; or (2) $20 billion in total assets, regardless of the number of deposit accounts.[27] Any other insured depository institution would be a *Non-Covered Institution*,

[20] 70 FR 73652 (Dec. 13, 2005).

[21] In the 2005 ANPR Covered Institutions were defined to include all insured institutions with total number of deposit accounts over 250,000 and total domestic deposits over $2 billion. A full description of the three options is provided in the 2005 ANPR.

[22] The 2005 ANPR comment letters are available at: *http://www.fdic.gov/regulations/laws/federal/2005/05comlargebank.html*. Addendum 2 provides a more complete discussion of comments.

[23] 71 FR 74857 (Dec. 13, 2006).

[24] See comment letters provided by American Bankers Association (March 13, 2007), America's Community Bankers (March 13, 2007) and The Financial Services Roundtable (March 7, 2007).

[25] In total, the FDIC received 13 comments on the 2006 ANPR. The 2006 comment letters are available at: *http://www.fdic.gov/regulations/laws/federal/2006/06comAC98.html*. Addendum 2 provides a more complete discussion of comments.

[26] Board of Governors of the Federal Reserve System (February 27, 2007) and Federal Reserve Bank of Minneapolis (January 17, 2007).

[27] For the purposes of the criteria in the text, an ''insured depository institution'' includes all institutions defined as such in the FDI Act. 12 U.S.C. 1813(c)(2). Other applicable terms would be as defined in the Reports of Condition and Income (Call Report) instructions (for insured banks) and Thrift Financial Reports (TFR) instructions (for insured savings associations): ''deposit accounts'' mean the total number of deposit accounts (including retirement accounts), ''domestic deposits'' mean total deposits held in domestic offices (for insured banks) or deposits (for insured savings associations), and ''total assets'' means the reported amount of total assets.

and would not be subject to this part of the proposed rule.[28] The FDIC requests specific comment on the proposed definition.

Continuation of Business Operations

In the event of failure a *Covered Institution's* legal entity status will terminate. In most cases, however, it is expected that a new entity will carry on the *Covered Institution's* business operations.[29] The new legal entity under which business operations will be continued is the *Successor Institution*, which could include an established or new insured depository institution or a bridge bank operated by the FDIC. The proposed rule is intended to provide a means to facilitate access to deposit funds and maintain the franchise value of the failed *Covered Institution or a Successor Institution*. Thus, in most cases, core business operations will continue post failure, although some operations may be suspended temporarily.

Process Overview

As discussed in part one of the proposed rule, in the event of failure, the FDIC would complete daily account processing to generate the deposit balances used by the FDIC for insurance purposes. Under part two of the proposed rule, after completion of the failed *Covered Institution's* final daily processing, the *Successor Institution* would place provisional holds on selected [30] deposit accounts, foreign deposit accounts and certain other liability accounts subject to a sweep arrangement. Provisional holds, once posted, would allow depositors access to the remaining balance in their accounts the day following failure, yet guard against the possibility of an uninsured depositor or unsecured general creditor receiving more than allowed under deposit insurance rules or the depositor preference statute.[31] The FDIC would use a standard set of depositor and customer data to make deposit insurance determinations. These determinations would be provided to the *Successor Institution,* probably several days after failure. The *Successor Institution* would then remove the provisional holds as specified by the FDIC and, if necessary, replace them with additional holds or debits based upon the deposit insurance determinations. The FDIC would continue to notify the *Successor Institution* to remove additional holds as information is received from depositors to complete the insurance determination. Figure 1 presents a hypothetical timeline of this process using local time at the *Successor Institution's* headquarters.

The FDIC requests comment on all aspects of this proposed approach, including costs, benefits and alternative approaches that would allow the FDIC to accomplish its objectives of affording a timely deposit insurance determination, a prompt release of funds to depositors, while preventing depositors and creditors from receiving more than they are entitled to under applicable law.

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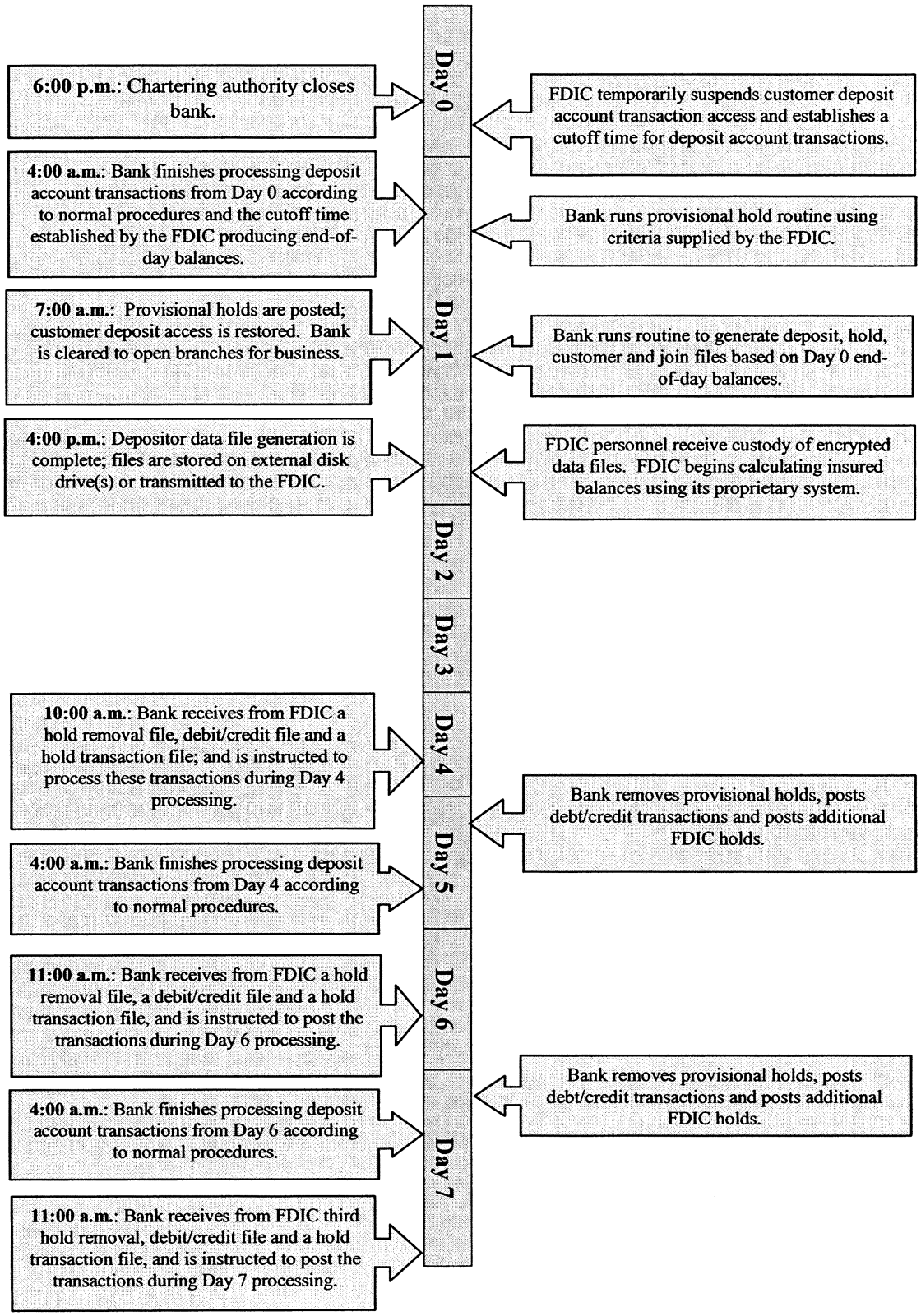
[28] The criteria for a Covered Institution apply to separately chartered insured depository institutions. Commonly owned depository institutions are not aggregated for the purposes of these criteria. Furthermore, a holding company may own insured depository institutions that are both Covered and Non-Covered.

[29] The provisional hold functionality and other requirements of the proposed rule should be developed in this context. It is possible a Covered Institution may be liquidated in the event of failure. The decision to liquidate or continue the deposit operations of a Covered Institution will be made on a case-by-case basis depending on the individual circumstances at the time.

[30] The FDIC will supply the business rules upon which a provisional hold will be placed. These business rules will be based upon current balance and account product types.

[31] Uninsured depositors are entitled to a pro rata distribution of the receivership proceeds with respect to their claim. The FDIC—at its discretion—may immediately distribute receivership proceeds in the form of advance dividends at failure. Advance dividends are based on the expected recovery to uninsured depositors.

Figure 1. Sample Resolution Timeline Using Provisional Holds



Provisional Holds

General description. Under the proposed rule, *Covered Institutions* would be required to have in place an automated process for implementing provisional holds concurrent with or immediately following the daily deposit account processing on the day of failure. After the placement of provisional holds, all other holds previously placed by the institution would still remain in effect.[32] The proposal would not require development of mechanisms to stop or alter interest accrual for the affected accounts.

Account-by-account application. Provisional holds would be applied to individual accounts in an automated fashion. Commonly owned accounts would not be aggregated by ownership for the purposes of calculating or placing provisional holds. Provisional holds would extend to all non-closed deposit accounts held in domestic and foreign offices, as well as certain sweep account arrangements.[33]

The nature of a provisional hold. The provisional hold is intended to bar access to some or all of a customer's account pending the results of the insurance determination. Preventing access could be accomplished using various methods, each of which have different implications for customer access and implementation costs. As described in the previous ANPRs, the FDIC contemplated the use of a persistent or hard hold. But other hold types or mechanisms may also accomplish the FDIC's objectives. Possible options include:

• *Persistent hold.* A ''persistent'' provisional hold would be applied once (on or immediately after the day of failure) and stay on the deposit account until it is removed at the order of the FDIC. Once applied, the persistent hold would reduce the customer's available balance. Only ''forced post'' transactions,[34] as dictated by the *Covered Institution's* normal practices, will post through a persistent provisional hold. In this regard, a persistent provisional hold protects held funds until the results of the insurance determination can be provided. The customer would be blocked from accessing funds held by a persistent hold regardless of the account transaction mechanism or the time of day.

• *Memo hold.* A provisional hold could be a ''memo hold'' for institutions that post deposit account transactions via batch process. A memo-type provisional hold remains effective only intra-day and does not affect the batch deposit posting process. The memo-type provisional hold amount is calculated immediately after end-of-day balances are available on the day of failure and the same amount is applied on a daily basis until changed or removed at the instruction of the FDIC. Once applied, a memo-type provisional hold would reduce the customer's available intra-day balance, blocking wire, over-the-counter, on-line, ATM, POS, VRU, and call center transactions in a batch-posting institution. A memo-type hold would block the customer from accessing funds intra-day and would allow the posting of all transactions during the nightly processing cycle. The memo-type provisional hold essentially protects the held balance from being authorized and therefore the declined items would not be presented for nightly processing.

• *Holding balances in an alternate account.* Rather than placing an account hold, balances could be removed from the account to which a provisional hold is to be applied and otherwise ''held'' in a work in progress (WIP) or suspense account. Since balances are removed from the affected account, they would not be available to the customer until the provisional hold was removed and the balance restored to the original account.

The more effective the hold mechanism is at preventing access to held amounts, the more likely it is to generate NSF checks. Holding balances in a separate account or using a persistent provisional hold protects the FDIC's interests by blocking customer access to held amounts at all times. These hold types thus may have the most severe effect on items returned due to insufficient funds. However, it may be possible to reduce the volume of returned items to a manageable level by instructing account officers, who would be reviewing the larger deposit account relationships, to limit the number of returned items if doing so would alleviate operational difficulties and the risk of loss due to nonpayment is expected to be low.

A memo-type provisional hold would allow transactions to be processed business-as-usual during the nightly cycle. In an institution with a ''pay-all'' policy, in which NSF items are processed during the batch nightly processing cycle and the return decision is made the following morning, either through automated decision rules or by account officer review, each of the three types of provisional holds might be equally effective. On the other hand, if the institution has a ''pay-none'' policy, in which NSF items not protected by a pre-existing overdraft agreement are slated for return the following business day, a memo-type hold may allow the FDIC more latitude in managing returned items and be less costly for the *Covered Institution.* However, it may place the FDIC at higher risk of inadvertently paying a claimant more than he or she is entitled to under the law. If a *Covered Institution* uses a memo-type provisional hold, the FDIC could require it to have in place practices and procedures for returning as NSF those items reducing the deposit account balance below the amount of the provisional hold, and to demonstrate the effectiveness of this process.

A persistent provisional hold may require greater systems development and other implementation costs on the part of the *Covered Institution* compared to holding balances in a separate account or a memo hold. Further, persistent provisional holds may take longer to post following failure, potentially making it difficult or impossible for some *Covered Institutions* to be opened in a timely fashion the following business day.

The FDIC is considering the desirability of each hold format discussed above, or whether to allow any combination of the three depending on the circumstances of the *Covered Institution.* If the FDIC were to allow the use of multiple hold types, it might require *Covered Institutions* to notify the FDIC which types are being used and why they are effective in limiting access to held amounts. The FDIC is asking for industry comment on the extent to which a particular type of hold better accomplishes the FDIC's objectives of preventing depositors and creditors from receiving more than they are entitled to under applicable law, maintaining franchise value of the institution, limiting systems development and implementation costs at *Covered Institutions* and improving the speed at which holds can be posted after failure. The FDIC also is interested in knowing whether other hold mechanisms not discussed here should be considered.

Provisional holds for deposit accounts. On the day of failure, the

[32] Provisional holds could overlap preexisting holds if the entire account is held or the unheld account balance before posting the provisional hold is less than the amount of the provisional hold. In such cases posting the provisional hold would have to be constructed so that it did not cause the account to become ''overdrawn'' and trigger service fees against the account.

[33] Non-closed deposit accounts include those that are open, dormant, inactive, abandoned, restricted, frozen or blocked, in the process of closing or subject to escheatment.

[34] Forced post transactions may include items such as ATM withdrawals, POS transactions, cashed checks, fees and deposit corrections.

FDIC would specify a deposit account balance (the ''account balance threshold'') that would determine whether a provisional hold would be placed on a particular deposit account.[35] No provisional hold would be placed on a deposit account with a balance less than or equal to the account balance threshold. For a deposit account above the account balance threshold, the FDIC would specify, again on the day of failure, a percentage (the ''provisional hold percentage'') that would be multiplied by the account balance in excess of the account balance threshold.[36] The product of this multiplication would equal the dollar amount of the provisional hold. Institutions would be required to adopt systems that would allow the hold to be calculated and placed. The account balance threshold as well as the provisional hold percentage could vary for the following four categories, as the *Covered Institution* customarily defines them:

1. Consumer demand deposit, negotiable order of withdrawal (''NOW'') and money market deposit accounts (''MMDA'').
2. Other consumer deposit accounts (time deposit and savings accounts, excluding NOW accounts and MMDAs).
3. Non-consumer demand deposit, NOW accounts and MMDAs.
4. Other non-consumer deposit accounts (time deposit and savings accounts, excluding NOW accounts and MMDAs).

The likely value of the account balance threshold for deposit accounts would be between $30,000 and $80,000. Based on data provided by a sample of insured institutions, this range of values would make only about 10 percent of deposit accounts subject to the provisional hold at most institutions. Given the historical loss experience for large institutions and their general liability structure, the FDIC expects that the provisional hold percentage on domestic deposits would usually be less than 15 percent.

Provisional holds for foreign deposits. For foreign deposits the provisional hold methodology will be the same as for deposit accounts, except that the account balance thresholds and the provisional hold percentages may vary based on the country in which the account is located.

Provisional holds for international banking facility deposits. For international banking facility deposits the provisional hold methodology will be the same as for deposit accounts, except that the account balance thresholds and the provisional hold percentages may differ.

Provisional holds for deposit accounts with prearranged, automated sweep features. As discussed in part one of the proposed rule, certain deposit accounts have a feature to ''sweep'' funds periodically according to predefined rules into another deposit account, a foreign deposit or an alternative investment vehicle.[37] The deposit account through which the customer has primary access to deposited funds—usually a demand deposit account—is the ''base sweep account.'' The investable or excess account balance is swept periodically into a ''sweep investment vehicle.'' Sweep investment vehicles may include, but are not limited to: (1) A deposit account at the same institution or an affiliated insured depository institution, (2) a foreign or IBF deposit, (3) repurchase agreements, (4) federal funds, (5) commercial paper and (6) a proprietary or third-party money market mutual fund.

Some sweep accounts would be subject to the same provisional hold requirements as a deposit account. These are defined as ''Class A'' sweep accounts and include:

- Base sweep accounts where the sweep investment vehicle is another deposit account in an office of the same institution. Both the base sweep account and the sweep investment vehicle are deposits that will be subject to the provisional hold requirements of a deposit account.
- Base sweep accounts where funds are wired from the *Covered Institution* to a separate legal entity other than the *Covered Institution* (e.g. a proprietary or third-party money market mutual fund). In this case, funds residing in the base sweep account (if any) would be subject to a provisional hold as any other deposit account held in a domestic office. No provisional hold would be required for funds residing outside the *Covered Institution* in the sweep investment vehicle.

All other sweep accounts—defined as ''Class B'' sweep accounts—would have a dual provisional hold methodology. For the fund balance remaining in the base sweep account as of the institution's customary close-of-business on the day of failure, the provisional hold methodology would be the same as applied to other deposit accounts. For the funds residing in the sweep investment vehicle as of the institution's customary close-of-business, the provisional hold methodology would have the capability of a separate account balance threshold and provisional hold percentage.[38] The balance threshold as well as the provisional hold percentage may vary for different types of sweep investment vehicles.[39]

The proposed rule would not require mechanisms to stop the processing of any prearranged deposit account sweep transactions in the event of failure. The provisional holds described above would allow for the transfer of balances from a deposit account to a sweep investment vehicle. The provisional holds would apply to liability accounts as they are designated on the books and records of the institution at its customary close-of-business.

Consider, for example, a prearranged automated sweep transaction in which a customer's entire deposit account balance is swept to the institution's Cayman Island branch prior to the institution's customary close-of-business. Under part one of the proposed rule, the Cayman Island branch deposit would be classified and treated as a foreign deposit. In the event of failure the FDIC could request a provisional hold on the Cayman Island foreign deposit with an account balance threshold of $0 and a provisional hold percentage of 100. The funds booked as a Cayman Island branch deposit as of the institution's customary close-of-business could be swept back to a deposit account the morning following failure, but only if the provisional hold remains in place.[40] Thus the depositor will not be allowed to remove held amounts from the *Successor Institution.*

Provisional holds for deposit accounts which accept automated credits from

[35] The account balance threshold could be any dollar amount specified by the FDIC, including zero.

[36] The provisional hold percentage could be any percentage specified by the FDIC, from 0 to 100 percent.

[37] Sweep accounts as described here do not include zero balance account (ZBA) arrangements that move funds to and from a master (or concentration) deposit account and one or more subsidiary deposit amounts at the same bank. Such deposit account arrangements are not intended to provide a yield on excess deposit balances nor do they change the customer's insurance status. ZBAs would be subject to the provisional hold methodology for deposit accounts described above.

[38] Some Covered Institutions may allow a single base sweep account to be associated with multiple investment vehicles. In this case a separate provisional hold methodology must be developed for each investment vehicle.

[39] Some alternative investment vehicles are deposits held in foreign offices. These foreign deposits would be subject only to the provisional hold methodology for the sweep alternative investment. Such foreign deposits would be excluded from the provisional hold methodology designed for non-sweep deposits held in the same foreign office.

[40] While funds may be swept back to the deposit account the morning following failure, the rights of these funds for claims purposes were set based on the institution's end-of-day account balances, and are not changed by the early morning sweep.

funds invested within the Covered Institution. Certain customers may provide the institution with instructions each day or periodically to invest funds in a non-deposit investment vehicle within the institution (e.g., an overnight time account at the Cayman Island branch), whereby such funds are automatically credited to the customer's deposit account the following day (''automated credit account''). While the daily decision to invest funds—and in what amounts—rests with the customer, the return of the funds the following day to the customer's deposit account is automated and may be functionally similar or identical to the return of funds in a sweep account arrangement. In some cases the deposit account receiving automated credits also will be a sweep base account accepting funds from a sweep investment vehicle.

Automated credit accounts would have a dual provisional hold methodology. For the fund balance remaining in the automated credit account as of the institution's customary close-of-business the provisional hold methodology would be the same as applied to other deposit accounts. For the funds residing in the investment vehicle as of the institution's customary close-of-business, the provisional hold methodology would have the capability of a separate account balance threshold and provisional hold percentage.[41] The account balance threshold, as well as the provisional hold percentage, may vary for different types of investment vehicles. These account balance thresholds and provisional hold percentages could be different from those applied to: (1) Funds automatically swept into a similar or identical investment vehicle or (2) funds held in a similar or identical investment vehicle that does not provide for an automated crediting of funds.[42]

Account balance used for provisional hold calculation. The account balance threshold and provisional hold percentage would be applied against the ledger balance calculated by the institution as of the end of the business day, in the event of failure.

Provisional hold duration. Under the proposed rule, the methodology for implementing a provisional hold process must be designed to hold funds until removed by the *Successor Institution* as instructed by the FDIC. Provisional holds will be removed when the results of the deposit insurance determination are available, generally anticipated being several days after failure, depending on the size and complexity of the failed institution's deposit base.

Provisional hold designation. Provisional holds should be labeled ''FDIC PHold''.

Provisional hold customer disclosure. The FDIC is considering whether to require the provisional hold, once placed, to be apparent if the customer views account information on-line or through other means. Some deposit systems, for example, have the capability to display point of sale (POS) authorized holds. The FDIC requests comment on the desirability and cost of such a requirement. If required, how should such disclosure be structured?

Security level and mechanism for manual removal of provisional holds. The Covered Institution will create policies, procedures and systems reasonably capable of preventing the alteration of FDIC provisional holds or other FDIC hold amounts except under the specific written direction of the FDIC.

Timeliness of the provisional holds process. The mechanisms put in place by a *Covered Institution* must have the capability of placing provisional holds on the applicable accounts prior to the *Successor Institution* opening for business the following day, but in no case later than 9 a.m. local time the day following the day of the depository institution failure.

Exception for systems with a small number of accounts. A Covered Institution may have multiple account systems through which provisional holds will be placed. Some account systems may service a relatively small number of accounts making the manual application of provisional holds feasible. The FDIC is considering whether to allow practices and procedures whereby provisional holds could be applied manually in certain cases, if the *Covered Institution* can demonstrate the holds could be applied in a timely fashion. If so, the manual application of provisional holds must be approved by the FDIC in response to a written request, which would include a justification for the manual process and its relative effectiveness for posting provisional holds in the event of failure. The FDIC requests comment on whether such exceptions would be desirable and, if so, how and in what circumstances they should be considered.

Institutional contacts. A Covered Institution. would be required to notify the FDIC of the person(s) responsible for producing the standard deposit data download and administering provisional holds, both while this functionality is being constructed and on an on-going basis. The *Covered Institution.* would be responsible for ensuring such contact information is current.

The FDIC requests specific comments on all aspects of these proposed requirements concerning provisional holds on deposits.

Removal of Provisional Holds

General process. The FDIC will begin forwarding insurance determination results to the *Successor Institution* once a substantial number of the insurance determinations have been made, which should be within a few days after failure. These results must be incorporated into the institution's deposit systems as soon as practicable, perhaps as quickly as the day following the receipt of the standard depositor and customer data sets. The results would contain instructions for the removal of provisional holds as well as replacement transactions, which could include the placement of new holds or account debits and credits.

The processing would work as follows. The FDIC would notify the *Successor Institution* that some or all of the deposit insurance determination results are available. The *Successor Institution* would remove the specified provisional holds and then, for uninsured accounts: (1) The account would be debited for the uninsured amount or (2) a debit and credit of the account (that is, debit the uninsured balance and credit an advance dividend). A new hold also may be applied to certain accounts. Removal of provisional holds and placement of new FDIC holds, debits and credits must be completed in the same nightly

[41] Some automated credit accounts may also be a base sweep account. In this case a separate provisional hold methodology must be developed for each investment vehicle. It is possible, for example, for a customer to each day provide the institution with instructions to invest a certain amount of funds in a Cayman Island branch time account where the funds would be returned to the customer's demand deposit account the following morning. Further, the customer may also have provided prearranged instructions to have excess balances residing in the same deposit account swept to a Cayman Island branch account where such funds also are returned to the demand account the following morning. In this case the Covered Institution must have a provisional hold methodology that: (1) *Treats* funds residing in the demand deposit account as of the institution's end-of-day consistent with other deposit accounts, (2) treats funds residing in the Cayman Island branch account as a result of the prearranged sweep consistent with other Cayman Island sweep investment vehicles and (3) treats funds residing in the Cayman Island branch account as a result of the daily investment instructions using a separate account balance threshold and provisional hold percentage.

[42] Some investment vehicles are foreign deposits. These funds would be subject only to the provisional hold methodology for the automated credit account. Such accounts would be excluded from the provisional hold methodology designed for non-sweep foreign deposits held in the same office.

processing schedule and the institution would have to be open for business as usual on the next business day. Since certain accounts cannot be determined without obtaining additional information from the depositor, the removal of provisional holds will occur in stages. In each stage the FDIC will provide the list of accounts against which provisional holds are to be removed as well as the corresponding hold, debit or credit transactions.

Removal of provisional holds. The *Successor Institution* must be able to remove provisional holds in batch as specified by the FDIC. On the day(s) provisional holds are to be removed, the FDIC would provide the *Successor Institution* with a file listing the accounts subject to removal of the provisional hold. The file format is shown in Addendum 3. The file would be in a *tab-* or pipe-delimited format and provided to the *Successor Institution* through FDIC*connect* or Direct Connect, depending on the size of the file. The file would be encrypted using a FDIC-supplied algorithm.

Provisional Hold Replacement Transactions

Debiting and crediting accounts after provisional holds are removed. On the day a provisional hold removal file is provided to the *Successor Institution,* the FDIC also would provide a file or set of files either in ACH format [43] or in a *tab-* or pipe-delimited format listing the accounts subject to debit or credit transactions, which reflect the results of the insurance determination process.[44] Addendum 4 provides details on the debit/credit data file structure. Multiple files may be needed to optimize the number of transactions to be processed in a single batch. For a large bank there could be millions of debit and credit transactions which may require multiple batch files.

The debit and credit transaction file would be transmitted to the *Successor Institution* through FDIC*connect* or Direct Connect, depending on the size of the file. The file would be encrypted using a FDIC-supplied algorithm to secure data during the transport process. The FDIC would provide the *Successor Institution* with the necessary software algorithms needed to decrypt the data files.

Posting of additional FDIC holds. On the day provisional holds are to be removed, the FDIC also would provide the *Successor Institution* with a file listing the accounts subject to a new hold to be placed after the removal of the provisional hold. The FDIC is considering whether to require a persistent or memo-type hold, the transfer of funds to a WIP account, or allow various alternatives depending on the circumstances of the *Covered Institution.* (As noted, we also are interested in comments on other alternatives.) The file format is shown in Appendix 3. The file would be in a *tab-* or pipe-delimited format and provided to the *Successor Institution* through FDIC*connect* or Direct Connect, depending on the size of the file. The file would be encrypted using a FDIC-supplied algorithm.

Removal of Additional FDIC Holds

In some cases provisional holds would be replaced by a second FDIC hold. These holds would be removed over time as further information is gathered from depositors needed to complete the insurance determination. These additional FDIC holds would be removed using the same file format described in Appendix 3.

The Generation of Deposit Account and Customer Data in a Standard Structure

A *Covered Institution* would be required to have in place practices and procedures to provide the FDIC with required depositor and customer data in a standard format following the close of any day's business. *Covered Institutions* would not be required to collect or generate new depositor or customer information. The standard data files are created through a mapping of pre-existing data elements and internal institution codes into standard data formats. Data will be provided on all non-closed deposit or foreign deposit accounts as well as Class B and automated credit accounts.

Files. The FDIC would require these data to be provided in the following five separate files:

1. *Deposit file.* Data fields for each non-closed deposit or foreign deposit account, except those deposit or foreign deposit accounts serving as an investment vehicle reported in the Class B Sweep/Automated Credit file. See Appendix A for more detail.

2. *Class B Sweep/Automated Credit file.* Data fields capturing information on funds residing in investment vehicles linked to each non-closed deposit account: (1) Involved in Class B sweep activity or (2) which accept automated credits. See Appendix B for more detail.

3. *Hold file.*[45] Deposit hold data fields for each non-closed deposit account. See Appendix C for more detail.

4. *Customer file.* Data fields for each customer. See Appendix D for more detail.

5. *Deposit-customer join file.* Data necessary to link each deposit and foreign deposit with the customers who have an interest in the account. See Appendix E for more detail.

Possible file combinations. Data could be submitted using one of each deposit, Class B sweep/automated credit, hold, customer, customer address and deposit-customer join files. Alternatively, data could be supplied using multiple files for each type. The number of files could correspond to the number of institutional systems of record, for example. When deposit accounts are maintained in multiple deposit applications (e.g., Business, IRA or Trust), then multiple data files adhering to the required data structure are acceptable to the FDIC. When an institution provides multiple data files for a single deposit application, all of the files must sum to the institution's subsidiary system control totals. In addition, either a set of customer files or a single customer file must accompany the deposit file(s). See Appendix F for rules governing the possible file combinations for depositor and customer data.

File format. Depositor and customer data files would be provided in tab- or pipe-delimited format. Each file name would contain the institution's FDIC Certificate Number, the file type (deposit, sweep hold, customer, customer address, join or other) and the date of the extract. Additional data could be provided, not required by the regulation, that may be helpful to the FDIC's deposit insurance determination process. For these additional files, the names should describe the file content such as ''lookup table'' or ''product codes''. All files would be encrypted using a FDIC-supplied algorithm. The FDIC would transmit the encryption algorithm over FDIC*connect.* The FDIC will support both ASCII and EBCDIC delimited files. All EBCDIC fields must

[43] The FDIC will be establishing ACH transactions, through the proper ACH definition channels to register the debit and credit transactions proposed here.

[44] The FDIC is proposing an optional tab- or pipe-delimited file format to ensure that Covered Institutions can apply debits and credits to all account types. The FDIC is unsure whether ACH transactions can be applied to all of the account classes (*e.g.* CDs and IRAs) maintained by the all Covered Institutions; therefore, this format has been included as an alternative means to process debt and credit transactions.

[45] The Hold file contains information on holds against each deposit account, including FDIC provisional holds. Since provisional holds may be generated after the completion of an institution's nightly deposit processing cycle, they may not be reflected fully in the Hold file generated as of the day of closing. The FDIC may require a second Hold file to be generated the day following closing to fully capture provisional holds that may not have been posted until the next deposit processing cycle.

be provided in Pic(X) format. Binary, packed or signed numeric formats will not be allowed.

File transmission mechanism. The FDIC would require that the data files be provided to the FDIC in the most expeditious manner. Data which can be compressed and encrypted could be transmitted to FDIC using existing telecommunication services. Should the volume be too great to transmit in the most expeditious manner then a portable hard drive should be used and physically transported by FDIC personnel to the FDIC's data processing facilities. The FDIC requests comment on various transmission/transport mechanisms.

Reporting Requirements

The criteria defining a *Covered Institution* include the number of its deposit accounts, total domestic deposits and total assets. Total domestic deposits and total assets are reported quarterly on the Consolidated Reports of Condition and Income (insured bank) and the Thrift Financial Report (insured savings association). Savings associations report the number of deposit accounts quarterly, but banks report on the total number of deposit accounts only annually, as part of the June reporting cycle. The FDIC would recommend quarterly reporting of the number of deposit accounts for all insured institutions with total assets over $1 billion.

Testing Requirements

The FDIC will conduct an initial test at each *Covered Institution* sometime after the initial implementation period ends.[46] All testing would be coordinated with the financial institution and conducted at the site of their choosing if multiple sites are available. Once the initial test is completed successfully, the FDIC anticipates that it would conduct additional tests infrequently at institutions that do not make major changes to their deposit systems[47]—perhaps only once every three-to-five years. More frequent testing may be necessary for institutions that make major acquisitions, experience financial distress (even if the distress is unlikely to result in failure) or undertake major system conversions.

Covered Institutions would be responsible for establishing a series of test accounts on their deposit account systems that could be used for verification purposes. These accounts would be used to verify the processing of holds, debits and credits. During the institution verification process the FDIC would expect to send transactions to the *Covered Institution* using FDIC*connect* or otherwise to verify that each institution could properly process these transactions.

The FDIC is contemplating development of a XML validation service which would be provided to each *Covered Institution* for the purpose of establishing compliance with the NPR standard data requirements for depositor and customer records. The XML schema would read a file (which has been created in the NPR standard format), validate the accuracy and integrity of the file content and provide a report that establishes the institution's compliance with the NPR criteria. In addition to the XML service, the FDIC also would provide a more readable description of the validation process to help facilitate institutional testing. The report generated from the XML validation would not contain any bank specific account information and the files would be encrypted prior to transmission to the FDIC. The results of the XML validation process would be reviewed by the institution to ensure that it does not contain any personally identifiable account information prior to being transmitted to the FDIC.

A *Covered Institution* would be responsible for ensuring that a representative sample of data has been passed through the XML validation service. At a minimum the sampling strategy should cover a cross-section of: (1) The geographies for the institution; (2) insurance categories found in Addendum 1; (3) the age of accounts: and (4) a cross section of account ledger balances maintained by the institution. The *Covered Institution* would be required to provide the FDIC its sampling strategy along with the validation results as a part of the periodic verification process. The FDIC is anticipating making available this XML validation service in the third quarter of 2008.

To reduce the frequency of FDIC testing and ensure ongoing compliance, the FDIC expects to require *Covered Institutions* to conduct tests in-house on a regular basis (perhaps every year) and provide the FDIC with evidence that the test was conducted and a summary of the test results.

In addition, the FDIC would have to test certain other requirements inside the institution, including but not limited to the ability to place and remove provisional holds, place new holds and implement debits and credits using a data set that meets the FDIC standards.

To protect financial privacy, the FDIC's testing process would not require that *Covered Institutions* transmit any sensitive customer data outside of the institution's premises. Therefore, all testing involving any sensitive customer data would be conducted on the institution's premises. The FDIC does not intend to remove sensitive data from the institution's premises under the proposed testing process. These items include, but might not be limited to, the completeness and reliability of the standard data structure, the format requirements of the standard data structure, and the accuracy and effectiveness of the provisional holds.

Implementation Requirements

Institutions meeting the criteria of a Covered Institution upon the effective date of the regulation. A *Covered Institution* would have 18 months from the regulation's effective date to fully implement the respective requirements.

Institutions meeting the criteria of a Covered Institution after the effective date of the regulation. Any insured institution meeting the criteria of a *Covered Institution* for at least two consecutive quarters would have 18 months following the end of the two consecutive quarters in which to fully implement the respective requirements.

Merger involving two Covered Institutions. Under the proposed rule, the requirements must be fully implemented within 18 months following the completion of the acquisition, although the acquisition does not delay any implementation requirements which may already have been in place for the individual institutions involved in the merger.

Merger involving a Covered and Non-Covered Institution. Under the proposed rule, the requirements must be fully implemented within 18 months following the completion of the acquisition, although the merger does not delay any implementation requirements which may already have been in place for the individual institutions involved in the merger.

Exception for troubled institutions. Under the proposed rule, on a case-by-case basis, the FDIC could accelerate the implementation timeframe of all or part of the proposed rule for a *Covered Institution* that either: (1) Has a composite rating of 3, 4 or 5 under the Uniform Financial Institutions Rating System (commonly referred to as

[46] In addition to testing, the FDIC expects to require that information contact points be validated (and updated as needed) every three-to-six months.

[47] A major change to a deposit system means a change made to a Covered Institution's data environment affecting one or more of the data elements described in attached Appendices. Changes could be the result of a merger or the streamlining of a financial institution's systems of record.

CAMELS)[48] or (2) is undercapitalized as defined for purposes of the prompt corrective action (''PCA'') rules.[49] In determining the accelerated implementation timeframe for such institutions, the FDIC would be required to consider such factors as the: (1) Complexity of the institution's deposit systems and operations; (2) extent of asset quality difficulties; (3) volatility of funding sources; (4) expected near-term changes in capital levels; and (5) other relevant factors appropriate for the FDIC to consider in its roles as insurer and possible receiver of the institution. The proposed rule would require the FDIC to consult with the *Covered Institution's* primary federal regulator in determining whether to implement this provision of the proposed rule.

Applications for extension of implementation requirements. A *Covered Institution* could request an extension of the 18-month deadline for implementing the requirements of the proposed rule. An application for such an extension would be subject to the FDIC's rules of general applicability, 12 CFR 303.251. For good cause shown, the FDIC could grant the application for an extension.

New Deposit Accounts

Knowing the identity of each depositor is an important aspect of a deposit insurance determination. The previous ANPRs contemplated requiring a unique ID for each depositor under certain options. This proposed rule does not require a unique depositor ID, rather the FDIC would rely upon customer information already maintained by the Covered Institution to link commonly owned accounts. Nevertheless, a unique depositor ID could prove helpful and speed the insurance determination process, especially for Covered Institutions with a large number of deposit accounts. Should the FDIC require a unique depositor ID to be assigned by Covered Institutions when a new account is opened? What would be the relative costs of such a requirement?

III. Request for Comments

The FDIC realizes that the proposed requirements for *Covered Institutions* could not be implemented without some regulatory and financial burden on the industry. The FDIC is seeking to minimize the burden while at the same time ensuring it can effectively carry out its mandates to make insured funds available quickly to depositors and provide a least-cost resolution for *Covered Institutions.* The FDIC seeks comment on the potential industry costs and feasibility of implementing the requirements of the proposed rule. The FDIC also is interested in comments on whether there are other ways to accomplish its goals that might be more effective or less costly or burdensome. In other words, what approach or combination of approaches (which may include new alternatives) most effectively meets this cost/benefit tradeoff? The FDIC seeks comments on all aspects of both parts of the proposed rule. In particular, the FDIC seeks comments on these specific issues:

1. The definition of a *Covered Institution.*
2. The desirability and structure of requiring the provisional hold, once placed, to be apparent if the customer views account information on-line or through other means.
3. The cost and effectiveness of the proposed provisional holds requirements.
4. The various mechanisms for transmitting data to the FDIC.
5. The cost and effectiveness of the proposed testing process.
6. The desirability of a unique depositor ID requirement for new deposit accounts.

Solicitation of Comments on Use of Plain Language

Also, section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

Discussion Meetings

Between 2004 and 2007, the FDIC met with six would-be *Covered Institutions* and four software vendors/servicers for *Covered Institutions.* These meetings took place at various stages in the development process. The FDIC found these meetings to be extremely helpful to its understanding of industry systems, practices and cost issues, and is requesting additional meetings with interested parties. FDIC staff is willing to travel to facilitate a meeting or structure a teleconference. Any such meetings will be documented in the FDIC's public files to note the institution's general views on the proposed rule or answers to questions that have been posed. In past meetings, the institutions and software vendors/servicers discussed proprietary information. Such confidential information would not be made public. Any institution or organization wishing to discuss this proposal in more detail should contact James Marino, Project Manager, Division of Resolutions and Receiverships, (202) 898–7151 or *jmarino@fdic.gov.*

IV. Paperwork Reduction Act

OMB Number: New Collection.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions having at least $2 billion in domestic deposits and either at least: (i) 250,000 deposit accounts; or (ii) $20 million in total assets.

Estimated Number of Respondents: 159.

Estimated time per response: 80–75,000 hours per respondent.

Estimated Total Annual burden: 312,500–625,000 hours.

Background/General Description of Collection: Section 360.9 contains collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (''PRA''). In particular, the following requirements of this proposed rule constitute collections of information as defined by the PRA: all notices that *Covered Institutions* must provide the FDIC of persons responsible for producing the standard data download and administering provisional holds, both while the functionality is being constructed and on an on-going basis (360.9(c)(3)); written practices and procedures for providing the FDIC with required deposit account and customer data, as to all accounts held in domestic and foreign offices, in a standard format upon the close of any day's business, to be created through a mapping of pre-existing data elements into standard data formats in six separate files, as indicated in the appendices to this Part 360 (360.9(d)(1) and (2)); all data provided to the FDIC pursuant to 360.9(d)(3); and the dollar costs and

[48] CAMELS is an acronym drawn from the first letters of the individual components of the rating system: Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk.

[49] 12 CFR Part 325.

time burdens associated with information systems acquisition, modification and maintenance that respondents will need in order to respond to the information requirements. The collections of information contained in this proposed rule have been submitted to OMB for review.

Estimated costs: Compliance with these requirements will require *Covered Institutions* to implement functionality to post provisional holds, remove provisional holds, post debit and credit transactions, post additional holds and provide customer data in a standard format reconciled to supporting subsidiary systems. These requirements also must be supported by policies and procedures and well as notification of individuals responsible for the systems. Further, the requirements will involve on-going costs for testing and general maintenance and upkeep of the functionality. Estimates of both initial implementation and on-going costs are provided.

Implementation costs will vary widely among the *Covered Institutions.* There are considerable differences in the complexity and scope of the deposit operations across *Covered Institutions.* Some *Covered Institutions* only slightly exceed the 250,000 deposit account threshold while several institutions have over 20 million deposit accounts. In addition, some *Covered Institutions*—most notably the largest—have proprietary deposits systems likely requiring an in-house, custom solution for the proposed requirements while most—generally the small-to-mid-sized ones—purchase deposit software from a vendor or use a servicer for deposit processing. Deposit software vendors and servicers are expected to incorporate the proposed requirements into their products or services to be available for their clients. In these cases implementation costs will be greatly reduced. This analysis assumes 100 of the 159 *Covered Institutions,* or 63 percent, would have reduced implementation costs due to the use of software or services from a vendor.

Comments from the 2005 and 2006 ANPRs provided some indication of implementation and on-going costs. Further, during November 2007 the FDIC had conversations with several *Covered Institutions* and deposit software vendors, which assisted in formulating these cost estimates.

For *Covered Institutions* with proprietary deposit systems implementation costs will vary considerably. The costs for the least complex of these institutions are estimated to range between $250,000 and $350,000.[50] For super-regional organizations implementation costs are estimated to be between $2 million and $4 million.[51] The costs for the largest, most complex *Covered Institutions* are estimated to be several times that of the super-regional organizations. For *Covered Institutions* using software or servicing provided by a vendor implementation costs were estimated to be $13,000 to $20,000 per institution. These costs primarily are due to installation of software received from the vendor.

Using this methodology overall industry implementation costs are estimated to range between $50 million and $100 million. The best estimate of implementation costs is the mid-point of this range, or $75 million. In reviewing implementation costs as part of the comments received from previous ANPRs the FDIC viewed them relative to a one basis point assessment against deposits. In this context the estimated implementation costs range between 11 and 21 percent of a one basis point assessment against deposits of *Covered Institutions.* The mid-point cost estimate would be 16 percent.

On-going costs for testing, maintenance and other periodic items is estimated to range between $6,000 and $13,000 for those *Covered Institutions* using software or servicing provided by a vendor. For super-regional organizations on-going costs are estimated to be between $150,000 and $250,000. The largest, most complex *Covered Institution* was estimated to have on-going costs as high as $500,000 per year. Overall, on-going industry cost estimates ranged from $4 million to $6.5 million, or 0.8 to 1.4 percent of a one basis point assessment against the deposits of *Covered Institutions.*

Comments: In addition to the questions raised elsewhere in this Preamble, comment is solicited on: (1) 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) 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) the quality, utility, and clarity of the information to be collected; (4) 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; e.g., permitting electronic submission of responses; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Addresses: Interested parties are invited to submit written comments to the FDIC concerning the Paperwork Reduction Act implications of this proposal. Such comments should refer to ''Large Bank Deposit Insurance Determination, 3064-xxxx.'' Comments may be submitted by any of the following methods:

- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: comments@FDIC.gov.* Include ''Large Bank Deposit Insurance Determination, 3064-xxxx'' in the subject line of the message.
- *Mail:* Executive Secretary, Attention: Comments, FDIC, 550 17th St., NW., Room F–1066, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (EST).
- A copy of the comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires an agency publishing a notice of proposed rulemaking to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). Pursuant to regulations issued by the Small Business Administration (13 CFR 121.201), a ''small entity'' includes

[50] Compliance with the proposed requirements will require staff time. This analysis assumes an hourly cost of $160 for Covered Institutions.

[51] The comment letter provided by the American Bankers Association dated March 13, 2007 in response to the 2006 ANPR indicated cost estimates provided by members ranged from $2 million to $6 million per institution for implementation (page 3).

a bank holding company, commercial bank, or savings association with assets of $165 million or less (collectively, small banking organizations). The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b) of the RFA (5 U.S.C. 605(b)), the FDIC certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule consists of two parts. The first part would establish the FDIC's practice for determining deposit account balances at a failed insured depository institution. It would impose no requirements on insured depository institutions. The second part of the proposed would require the largest insured depository institutions to adopt systems that would, in the event of the institution's failure: (1) Provide the FDIC with standard deposit account and customer information; and (2) allow the FDIC to place and release holds on liability accounts, including deposits. This part of the proposed rule would apply only to *Covered Institutions*—defined in the proposed rule as insured depository institutions having at least $2 billion in domestic deposits and either: (1) More than 250,000 deposit accounts; or (2) total assets over $20 billion, regardless of the number of deposit accounts. There are no small banking organizations that would come within the definition of *Covered Institutions.*

VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

Addendum 1—Overview of Primary FDIC Deposit Insurance Categories

Insurance category	Description
1. Single Ownership	Funds owned by a natural person including those held by an agent or custodian, sole proprietorship accounts and accounts that fail to qualify in any other category below. Coverage extends to $100,000 per depositor.
2. Joint Ownership	Accounts jointly owned as joint tenants with the right of survivorship, as tenants in common or as tenants by the entirety. Coverage extends to $100,000 per co-owner. • The account title generally must be in the form of a joint account ("Jane Smith & John Smith"). • Each of the co-owners must sign the account signature card. (This requirement has exceptions, including certificates of deposit.) • The withdrawal rights of the co-owners must be equal.
3. Revocable Trust	Accounts whereby the owner evidences an intention that upon his or her death the funds shall belong to one or more qualifying beneficiaries. For each owner, coverage extends to $100,000 per beneficiary. • The title of the account must include "POD" (payable-on-death) or "trust" or some similar term. • The beneficiaries must be specifically named in the account records. (This requirement applies to informal "POD" accounts but does not apply to formal "living trust" accounts.) • The beneficiaries must be the owner's spouse, children, grandchildren, parents or siblings.
4. Irrevocable Trust	Accounts established pursuant to an irrevocable trust agreement. Coverage extends to $100,000 per beneficiary. • The account records must indicate that the funds are held by the trustee pursuant to a fiduciary relationship. • The account must be supported by a valid irrevocable trust agreement. • Under the trust agreement, the grantor of the trust must retain no interest in the trust funds. • For "per beneficiary" coverage, the interest of the beneficiary must be "non-contingent."
5. Self-Directed Retirement	Individual retirement accounts under 26 U.S.C. 408(a), eligible deferred compensation plans under 26 U.S.C. 457, self-directed individual account plans under 29 U.S.C. 1002 and self-directed Keogh plans under 26 U.S.C. 401(d). Coverage extends to $250,000 per owner or participant. • The account records must indicate that the account is a retirement account. • The account must be an actual retirement account under the cited sections of the Tax Code.
6. Corporation, Partnership or Unincorporated Association.	Accounts of a corporation, partnership or unincorporated association. Coverage extends to $100,000 per entity. • The account records must indicate that the entity is the owner of the funds or that the nominal accountholder is merely an agent or custodian (with the entity's ownership interest reflected by the custodian's records). • The entity must be engaged in an "independent activity." • The entity must not be a sole proprietorship (which is treated as a single ownership account).
7. Employee Benefit Plan	Deposits of an employee benefit plan as defined at 29 U.S.C. 1002, including any plan described at 26 U.S.C. 401(d). Coverage extends to $100,000 per participant. • The account records must indicate that the funds are held by the plan administrator pursuant to a fiduciary relationship. • The account must be supported by a valid employee benefit plan agreement. • For "per participant" coverage the interests of the participants must be ascertainable and non-contingent.
8. Public Unit	Funds of "public units" or "political subdivisions" thereof. Coverage extends to $100,000 for interest-bearing deposits and $100,000 for non-interest-bearing deposits for each official custodian of the public unit or subdivision. • For separate coverage for the non-interest-bearing deposits, the insured financial institution must be located in the same State as the public unit. • The account records must indicate that the funds are held by the custodian in a custodial capacity. • For "per custodian" coverage, the custodian must be a separate "official custodian." • For "per subdivision" coverage, the governmental entity must be a separate "political subdivision."

Addendum 2—Summary of 2005 and 2006 ANPR Comments

The FDIC received 28 comment letters in response to the 2005 ANPR and 13 from the 2006 ANPR. While most of the comment letters touched on multiple points, they generally focused on a common theme. The various themes of the letters are summarized in Table 3. In response to the 2005 ANPR 64 percent of the comment letters indicated opposition due to the view that implementation costs of the options outweighed any potential benefits, high potential costs and regulatory burdens, or the options simply are not needed, compared to 62 percent of the 2006 ANPR comments. In other words, these commenters expressed the general belief during both years that the FDIC failed to make a compelling case in favor of any of the options in light of their perceptions of the costs.

TABLE 3.—SUMMARY OF 2005 AND 2006 ANPR COMMENTS

General comment	2005 ANPR		2006 ANPR	
	Number	Percentage	Number	Percentage
Costs Outweigh Benefits or Opposed Due to Costs/Burdens	15	53.6	6	46.2
Options Are Not Needed	3	10.7	2	15.8
Do Not Include Our Institution As Covered	2	7.1	1	7.7
Supportive, But In Some Cases Expressed Concern Over Costs	5	17.9	1	7.7
Supportive Because Of Too-Big-To-Fail and/or Market Discipline	2	7.1	2	15.8
Options Raise Significant Privacy Issues	1	3.6	1	7.7
Total	28	100.0	13	100.0

The 2005 ANPR noted that the FDIC was considering expanding the definition of a *Covered Institution* to include any institution with at least $20 billion in total assets, regardless of the total number of deposit accounts. Two institutions falling into this category commented that the definition of a *Covered Institution* should not be changed from the original definition of at least 250,000 deposit accounts and $2 billion in domestic deposits. The 2006 ANPR more explicitly included the expanded definition of *Covered Institutions*. One respondent falling within this expanded definition noted they should not be defined as a *Covered Institution*.

During both comment periods, some commenters were expressly supportive of one or more of the options, but in some cases indicated concern over costs. In particular, the letter from Dollar Bank stated it ''understands and supports the need for the FDIC to have a rapid and effective process for determining insurance coverage. Not only does this benefit the FDIC directly, but effective performance by the FDIC also benefits the entire banking system by assuring the public of the reliability of federal insurance of deposits. The FDIC asked in this Proposal for suggestions on alternative approaches that might achieve approximately the same benefits for the FDIC at lower costs for banks. Because Dollar sees no reasonable alternative, it supports the general thrust of the Proposal.'' [52]

In response to the 2006 ANPR the Board of Governors of the Federal Reserve indicated it ''strongly supports the goal of the 2006 ANPR, which is to ensure that the largest and most complex insured depositories and the FDIC have in place data and other management systems that would enable the FDIC to promptly identify insured deposits and resolve the institution in an orderly manner that is least costly to the FDIC and to taxpayers. Moreover, the Board fully agrees that it is important for these systems to be in place and operationally tested before a large or complex institution becomes troubled.'' [53]

The FDIC received comment letters from the Federal Reserve Bank of Minneapolis in response to both ANPRs. Its letter regarding the 2006 ANPR provided three recommendations to the FDIC.[54]

- ''Given the net benefits of its suggested reforms, the FDIC must revamp the current insurance determination procedures; the question, therefore, is ''how'' not ''if.''
- The FDIC should reject, as time-inconsistent, proposals to address flaws in the status quo only when banks become riskier.
- The FDIC should adjust its proposals, based on industry input, to minimize costs while ensuring that the recommended approach remains credible and covers institutions for which the current system would not facilitate least-cost resolution.''

The 2005 and 2006 ANPRs solicited comment on alternative means of meeting the objective of conducting a timely insurance determination on Covered insured institutions.'' No alternative suggestions were received.

Since such a large portion of the comment letters raised concerns about costs versus benefits, this topic will be discussed in the next section. This will be followed by a discussion of other issues raised in the comment letters.

Commenters' Views on Costs Versus Benefits

General arguments. Many commenters—including all responses from the trade organizations—argued that any options presented in either ANPR would impose high or significant costs on *Covered Institutions.* These costs would come in the form of dollar expenditures and the utilization of scarce technological resources.

Many commenters also argued that the likelihood of a Covered-Institution failure was remote. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA''), the Federal Deposit Insurance Corporation Improvement Act of 1991 (''FIDICA'') and the Federal Deposit Insurance Reform Act of 2005 (''FDIRA'') were cited as containing provisions reducing the likelihood of large-institution failures. It was noted that the FDIC is undergoing the longest period in its history without a failure. Furthermore, responders pointed out that the most recent failures were of institutions not proposed to be covered by the regulation. It also was argued that the FDIC likely will have ample warning of a large-institution failure, thereby allowing for adequate preparation time.

[52] Comment letter provided by Dollar Bank dated March 13, 2006 in response to the 2005 ANPR, page 1.

[53] Comment letter provided by the Board of Governors of the Federal Reserve System dated February 27, 2007 in response to the 2006 ANPR, page 1.

[54] Comment letter provided by the Federal Reserve Bank of Minneapolis dated January 17, 2007 in response to the 2006 ANPR, page 1.

Several commenters recommended applying the 2005 ANPR options only in the event the *Covered Institution* reaches problem status. This suggestion is discussed in more detail below.

Failure preparation time. The joint trade association letter noted ''failures that have occurred in the last few years were among financial institutions that would not be covered by this 2005 ANPR. Regulators frequently had knowledge of the problems undermining these institutions and had time to prepare for closure. Sudden failures were more likely to have been caused by fraud or other criminal activity. It is highly unlikely that such a series of similar events could cause a failure of covered financial institutions because of their size, capital strength and diversity of lines of business. Constructing, maintaining and periodically testing the programs proposed under this 2005 ANPR solely because of the remote chance of sudden failure resembles an expensive solution in search of a very low probability problem.'' [55]

The 2005 ANPR noted that *Covered Institutions* are more likely to be closed due to liquidity reasons, thus are prone to fail on any day of the week. *Covered Institutions* generally would be handled through a bridge bank structure, and to preserve franchise value the failed institution must open the day following failure. The provisional hold functionality included in Options 1 and 2 allows for a next-day opening of the bridge institution. The nightly processing cycle of *Covered Institutions* does not end until the early morning hours, often extending until 4 a.m. and, in some cases, until 7:30 a.m. Once the nightly processing schedule is complete a failed institution must generate deposit data to be used by the FDIC to make the deposit insurance determination. The 2005 ANPR options recognize that, even under the best of circumstances, it would be impossible for the FDIC to complete the steps necessary for a deposit insurance determination and have the results posted in time for the opening of the bridge bank the business day following failure.[56] Therefore, it is the FDIC's view that one or more of the 2005 ANPR options appear necessary for a successful bridge bank opening, regardless of the advance warning or preparation time allotted.

Additional research recommended. In both ANPRs the trade organizations stressed that the costs of the FDIC's proposed approaches far exceeded any quantifiable benefits. This theme was present in the comments to the 2005 ANPR, and continued—in some cases more vigorously—in the 2006 ANPR comments. In addition, in the 2006 ANPR comments the trade organizations placed greater emphasis on the FDIC's need to gather more information on costs and benefits to make an informed decision.

With regard to potential benefits, The Financial Services Roundtable ''recommends that the FDIC publish for public comment the stages that a large bank and its supervisor would go through before the bank reached the point where it would be deemed to be a 'failed' institution. This analysis is needed so that the probability of a large institution becoming a failure can be assessed. These stages, which almost certainly would be spread over several years, include recapitalizations, downsizing, management changes, strategic redirections, acquisition by a healthy bank, supervisory interventions, and other actions which would steer the institution away from failure long before it became a failed institution. As a point of fact, there have been instances when this has occurred among larger banks—most recently when Riggs Bank was acquired by PNC. It may be that, given these stages, the probability of a large bank failing at a cost to the FDIC is so low and the cost upon failure being so low, that the *additional benefit* provided by the proposed rule, relative to the FDIC's present procedures, is essentially zero.'' [57]

Also, with regard to potential costs, The Financial Services Roundtable ''is concerned that the FDIC has not properly estimated the cost of implementing the proposed rule and maintaining the related information systems. In particular, the Roundtable is concerned that the FDIC has not gathered any cost information in a systematic manner as to what it would cost *Covered Institutions* to not only implement the proposed rule, but also to maintain deposit data in a manner that complies with the proposed rule. The implementation cost data provided in Table 4 of the [2005] ANPR does not constitute a rigorous cost estimate gathered from a representative sample of *Covered Institutions* which could then be extrapolated to a realistic cost estimate for all *Covered Institutions.* Instead, these cost estimates are fairly ad-hoc and not prepared in accordance with a predetermined cost-survey methodology. The FDIC should conduct a systematic study of the cost of implementing the proposed rule, including its own costs in ensuring compliance with the proposed rule.'' [58]

Estimated costs—the 2005 ANPR. No trade organization provided specific cost estimates on the 2005 ANPR options, other than to say the costs would be ''high'' or ''very substantial.'' Four of the 14 large-institution responders—Wachovia Corporation, Capital One Financial Corporation, First Tennessee and Dollar Bank—provided cost estimates for one or more of the options. These estimates generally were characterized as being ''rough'' and frequently contained caveats. The estimates provided are listed in Table 4, which also shows the assessable deposit base of the institution (indicating institution size) and the impact of a 1-basis point annual FDIC assessment (indicating a basis for relative cost comparison).

The paucity of data provided on Option 3 reflects the view among most commenters that it is unfeasible. Wachovia Corporation indicated, for example, that Option 3 was ''wholly unacceptable,'' [59] which appears to be the reason why no cost estimate was provided for this option. First Tennessee was the only responder providing an estimate for Option 3 indicating it was roughly five times higher that that for Option 2.

[55] American Bankers Association, America's Community Bankers and The Financial Services Roundtable, page 3.

[56] These steps include: (1) Generating the depositor data file, (2) transmitting the data file to the FDIC, (3) processing the depositor data to produce the deposit insurance determination results and (4) transmitting and posting these results on the institution's deposit systems.

[57] Comment letter from The Financial Services Roundtable dated March 7, 2007 in response to the 2006 ANPR, page 3.

[58] Ibid.

[59] Wachovia Corporation, page 3.

TABLE 4.—COST ESTIMATES OF 2005 ANPR OPTIONS

Responder	Comment	Estimated implementation cost	Assessable deposits ($ Millions)	1-Basis point annual FDIC assessment ($ Millions)	Estimated cost as a % of 1 BP assessment
Wachovia Corporation	Option 2, for demand deposit, time deposit and securities systems only.	"$2 mm or more"	307,000	30.7	7%
Capital One Financial Corporation.	Option 1	"over $220,000"	44,000	4.4	5
First Tennessee	Option 2	"exceed $1,000,000"	23,000	2.3	44
First Tennessee	Option 3	"mid seven figures"	23,000	2.3	200
Dollar Bank	Cost of Option 2, "negligible" additional cost for Option 1.	"approximately $60,000"	4,500	0.45	13

For Options 1 and 2 the cost estimates provided in the table are fairly modest when matched against other potential deposit insurance costs. Compared to a 1-basis point annual FDIC assessment, the estimated implementation costs of Options 1 or 2 ranged from 5 to 44 percent. The FDIC expects that implementation costs will vary across institutions. The deposit systems at *Covered Institutions* are different. In particular, some institutions rely primarily on proprietary systems while others use software or servicing provided by an outside vendor.

Both ANPRs noted that many *Covered Institutions* use deposit software supplied by a common vendor or have their deposits serviced by a common servicer. The ANPRs suggested this structure may help mitigate the implementation costs of the options. No deposit software vendor or servicer responded to either ANPR. In commenting on the 2006 ANPR, The Financial Services Roundtable indicated ''there is very little commonality across the deposit-accounting systems of *Covered Institutions* because each institution, over the years, has customized its systems to meet its own needs and to integrate the acquisition of other banks. This absence of systems commonality will greatly increase the cost of implementing the proposed rule.'' [60] The FDIC believes this common usage would mitigate implementation costs.

Estimated costs—the 2006 ANPR. The 2006 ANPR comments provided additional cost information. The American Bankers Association noted that ''[c]ost estimates provided by our members ranged from $2 million to $6 million per institution for initial compliance, testing, and training, plus additional testing and validation costs of approximately $500,000 per year. These are rough estimates, of course, given that the ANPR, by design, did not provide enough specifications for a bank to know precisely what it would spend.'' [61]

Two commercial banks also provided cost information for the 2006 ANPR requirements. Union Bank of California indicated ''the proposed functionality by all banks system-wide could be in the billions of dollars,'' although no documentation was provided in support of this estimate.[62] Zions Bancorporation indicated ''it would cost our institution millions of dollars to implement.'' [63]

Too big to fail and market discipline. During both comment periods several commenters raised the issue of TBTF, effectively expressing the concern that uninsured depositors of a large institution could be made whole in the event of failure, regardless of expected losses in the failed institution. The Federal Reserve Bank of Minneapolis letter in response to the 2005 ANPR noted that ''[i]n the face of insufficient technology to segregate deposits or information to determine the insurance status of deposits, therefore, the FDIC would likely prefer to provide depositors with access to deposits even if they might be uninsured. This preference, even if understandable, undercuts least cost resolution and puts pressure on policymakers to invoke the systemic risk exception of [FDICIA]. Invoking the systemic risk exception due to limitations in the resolution process (as opposed to preventing a true systemic crisis) could contribute to substantial resource misallocation in the economy over time.'' [64] The letter noted that these costs are difficult to quantify, although they could be substantial.

FDIC's Views on the Cost/Benefit Tradeoff

Any option will impose industry costs, but benefits also will accrue. The FDIC must balance these costs and benefits.

Summary of costs. In its 2005 visitations to the four large deposit software vendors/servicers, two of the organizations indicated the cost of the provisional hold functionality was fairly modest. Both ANPRs specifically requested comment on the costs of implementing the various options. The limited data summarized above suggests fairly modest implementation costs for an Option 2 approach and, for some institutions, Option 1 as well, as defined in the 2005 ANPR. These options are similar to the options presented in the 2006 ANPR. The consensus of comments was that 2005 ANPR Option 3 would be extremely expensive.

Many responders to both ANPRs noted the low likelihood of a Covered-Institution failure. Historical evidence indicates this to be the case. The FDIC also agrees that the reforms implemented in FIRREA, FDICIA and FDIRA serve to reduce the probability of a Covered-institution failure. However, even if the likelihood of a failure among *Covered Institutions* is perceived to be low, it is not zero. The FDIC should have in place a credible plan for resolving the failure of an institution of any size with the least possible costs. The ability to determine the insurance status of depositors in a failed institution in a timely manner is a critical element for ensuring a least-costly resolution.

Meeting the FDIC's legal mandates. FDICIA was one of the most important

[60] Comment letter provided by The Financial Services Roundtable dated March 7, 2007 provided in response to the 2006 ANPR, page 4.

[61] Comment letter provided by the American Bankers Association dated March 13, 2007 in response to the 2006 ANPR, page 3.

[62] Comment letter provided by Union Bank of California dated March 13, 2007 in response to the 2006 ANPR, page 1.

[63] Comment letter provided by Zions Bancorporation dated March 5, 2007 in response to the 2006 ANPR, page 1.

[64] Federal Reserve Bank of Minneapolis, pages 2–3.

pieces of legislation affecting the FDIC's failure resolution process. Its least-cost requirement effectively requires uninsured depositors to be exposed to losses. Also, FDICIA's legislative history and the nature of the systemic risk exception provide a clear message that uninsured depositors of large institutions are to be treated on par with those of any size. Meeting these mandates is an important benefit of the requirements being proposed.

Providing liquidity to depositors. The provisional hold functionality proposed in both ANPRs create a mechanism for the FDIC to provide customer access to their deposit accounts immediately after failure, albeit with some FDIC provisional hold for large accounts. The ability to continue uninterrupted the deposit operations of a Covered Institution in the event of failure has significant benefits for depositors as well as the preservation of the institution's franchise value.

Enhancement of market discipline. The FDIC's legal mandates have direct implications for TBTF and market discipline. If financial markets perceive uninsured depositors in large institutions will be made whole in the event of failure, deposits will be directed toward these larger depository institutions. The result would be the misallocation of economic resources. Many market observers believe there are substantial benefits of improved market discipline that accrue even without serious industry distress or bank failures. The FDIC agrees with Mr. Stern's assessment that this resource misallocation could be significant.

Effective market discipline also limits the size of troubled institutions and results in a more rapid course toward failure. Both serve to mitigate overall resolution losses. Lower resolution losses benefit insured institutions through lower insurance assessments.

Equity in the treatment of depositors of insured institutions. In the absence of one or more of the options outlined in the 2005 and 2006 ANPRs, the FDIC is concerned that the resolution of a *Covered Institution* could be accomplished only through a significant departure from its normal claims procedures. This departure could involve leaving the bank closed until an insurance determination is made or the use of shortcuts to speed the opening of the bridge institution. The use of shortcuts or other mechanisms to facilitate depositor access to funds will imply disparate treatment among depositors within the failed institution and certainly different treatment relative to the closure of a Non-Covered Institution. The FDIC places a high priority on the consistent implementation of its claims policies and procedures regardless of the size or complexity of the institution.

Preservation of franchise value in the event of failure. The sale of the franchise of a failed institution can provide significant value to mitigate failure costs and is a necessary ingredient to a least-cost resolution. Superior Bank, FSB, one of the largest failures over the past 10 years, generated a franchise premium of $52 million, or 17 percent of current estimated FDIC losses in the failure. An ineffective claims process—especially one deviating significantly from the FDIC's normal policies and procedures—risks reducing or destroying an important asset of the receivership. Preservation of franchise value in the event of failure of a *Covered Institution* will be an important benefit of the proposed options.

Implementation of Options Upon Reaching Problem Status

In response to both ANPRs several commenters suggested delaying the implementation of any options until a *Covered Institution* reaches ''problem bank status.'' [65] For supervisory purposes problem bank status refers to any insured depository institution with a composite CAMELS rating of ''4'' or ''5''.

Several commenters also provided insights into the potential time needed to implement the proposed rules. The Clearing House, for example, noted that ''material information system changes take significant time. Our member banks have discussed the ANPR with their technical staffs and have determined that any of the requested changes *could* be made, but only over a significant period of time. Without more specific direction, they cannot put a specific timeframe on the project, but to make any substantial changes over multiple systems, and then fully test them, is likely to take more than a year.'' [66] Additional time would be needed for the FDIC to test the system changes.

The FDIC is concerned that a *Covered Institution* could fail prior to reaching problem status (with a CAMELS rating of ''3'', for example), or relatively shortly after attaining problem status. If the one-year implementation time estimate is generally accurate, the FDIC risks not meeting its objectives should a *Covered Institution* fail more quickly than one year after being designated a problem institution. Further, a period of financial or operational stress is not the opportune time to make the proposed system enhancements.

New Deposit Accounts

The 2006 ANPR solicited comments on whether *Covered Institutions* should be encouraged or required to know the insurance status of each new deposit account and/or notify customers of this status when a new account is opened. The American Bankers Association noted that the ''training and compliance costs associated with any modifications to banks'' account opening procedures would be enormous. Perhaps of greater significance, any modification has the potential to affect customer relations negatively. This is especially so if the account opening process is lengthened and the customer, after hearing a discussion about insurance status, is left with the impression that the bank at which he or she has just entrusted his or her money is a candidate for failure. It is not in anyone's best interest to require regulatory disclosures that in their language could have the effect of undermining confidence in the banking system.'' [67]

Addendum 3—Non-Monetary Transaction File Structure

This is the structure of the data file the FDIC will provide to remove or add a FDIC hold for an individual account or sub-account. The file will be in a tab- or pipe-delimited format and provided through FDIC*connect* or Direct Connect. The file will be encrypted using a FDIC-supplied algorithm.

[65] See, for example, the American Bankers Association, America's Community Bankers and The Financial Services Roundtable letter in response to the 2005 ANPR, page 3.

[66] The Clearing House, page 3.

[67] Comment letter provided by the American Bankers Association dated March 13, 2007 in response to the 2006 ANPR, page 7.

Field name	Field description	Comments	Format
1. DP_Acct_Identifier	Account Identifier The primary field used to identify the account. This field may be the Account Number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier–2	Account Identifier–2 If necessary, the second element used to identify the account.		Character (25).
3. DP_Acct_Identifier–3	Account Identifier–3 If necessary, the third element used to identify the account.		Character (25).
4. DP_Acct_Identifier–4	Account Identifier–4 If necessary, the fourth element used to identify the account.		Character (25).
5. DP _Acct_Identifier–5	Account Identifier–5 If necessary, the fifth element used to identify the account.		Character (25).
6. DP_Sub_Acct_Identifier	Sub-Account Identifier If available, the sub-account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. PH_Hold_Action	Hold Action The requested hold action to be taken for this account or sub-account. Possible values are: • R = Remove. • A = Add.		Character (1).
8. PH_Hold_Amt	Hold Amount Dollar amount of the FDIC hold to be removed or added.		Decimal (14,2).
9. PD_Hold_Desc	Hold Description FDIC hold to be removed or added.		Character (225).

Addendum 4—Debit/Credit File Structure

This is the structure of the data file the FDIC will provide to apply debits and credits to an individual account or sub-account after the removal of FDIC holds. The file will be in a tab-or pipe-delimited format and provided through FDIC*connect* or Direct Connect. The file will be encrypted using a FDIC-supplied algorithm. The FDIC also is considering using ACH transactions to apply monetary transactions to accounts being held by the FDIC. Further analysis is required to determine how non-monetary and monetary transactions can be synchronized while ensuring that account funds are properly maintained in order for FDIC transactions to be applied.

Field name	Field description	Comments	Format
1. DP_Acct_Identifier	Account Identifier The primary field used to identify the account. This field may the Account Number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP _Acct_Identifier–2	Account Identifier–2 If necessary, the second element used to identify the account.		Character (25).
3. DP_Acct_Identifier–3	Account Identifier–3 If necessary, the third element used to identify the account.		Character (25).
4. DP _Acct_Identifier–4	Account Identifier–4 If necessary, the fourth element used to identify the account.		Character (25).
5. DP _Acct_Identifier–5	Account Identifier–5 If necessary, the fifth element used to identify the account.		Character (25).

Field name	Field description	Comments	Format
6. DP _Sub_ Acct_ Identifier	Sub-Account Identifier If available, the sub-account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. DC _Debit_Amt	Debit Amount Dollar amount of the debit to be applied to the account or sub-account.		Decimal (14,2).
8. DC_Credit_Amt	Credit Amount Dollar amount of the credit to be applied to the account or sub-account.		Decimal (14,2).
9. DC_ Transaction_ Desc	Debit/Credit Description FDIC message associated with the debit or credit transaction.		Character (225).

List of Subjects in 12 CFR Part 360

Banks, banking, savings associations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 360 of title 12 of the Code of Federal Regulations as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for part 360 continues to read as follows:

Authority: 12 U.S.C. 1821(d)(1), 1821(d)(10)(c), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L 101–73, 103 Stat. 357.

2. Add new §§ 360.8 and 360.9 to read as follows:

§ 360.8. Method for determining deposit account balances at a failed insured depository institution.

(a) *Purpose.* The purpose of this section is to describe the process the FDIC will use to determine deposit account balances for insurance coverage and receivership purposes at a failed insured depository institution.

(b) *Definitions*—(1) The *FDIC cutoff point* means the point in time established by the FDIC after it has been appointed receiver of a failed insured depository institution and takes control of the failed institution.

(2) The *Applicable cutoff time* for a specific type of deposit account transaction means the earlier of either the failed institution's normal cutoff time for that specific type of transaction or the FDIC cutoff point. In a depository institution failure where deposit operations are not transferred to a successor institution, the Applicable cutoff time for a particular type of deposit account transaction is the FDIC cutoff point.

(3) *Close-of-business deposit account balance* means the closing ledger balance of a deposit account on the day of failure of an insured depository institution determined by using the applicable cutoff time. This balance may be adjusted to reflect steps taken by the receiver to ensure that funds are not received by or removed from the institution after the FDIC cutoff point.

(c) *Determining closing day balances.* (1) In determining deposit account balances for insurance coverage and receivership purposes at a failed insured depository institution, the FDIC will use close-of-business deposit account balances as may be adjusted for funds that are received by or removed from the institution after the FDIC cutoff point.

(2) A check posted to the close-of-business deposit account balance but not collected by the depository institution will be included as part of the balance, subject to the correction of errors and omissions and adjustments for uncollectible items that the FDIC may make in its role as receiver of the failed depository institution.

(3) For deposit insurance and receivership purposes in connection with the failure of an insured depository institution, a depositor's rights will be determined as of the point the close-of-business deposit account balance is calculated, irrespective of the continuation of the institution's computer and other systems after this point. These rights may be adjusted as necessary to account for funds that are received by or removed from the institution after the FDIC cutoff point.

§ 360.9. Large-bank deposit insurance determination modernization.

(a) *Purpose and scope.* This section is intended to allow the deposit and other operations of a large insured depository institution (defined as a ''Covered Institution'') to continue functioning on the day following failure. It also is intended to permit the FDIC to fulfill its legal mandates regarding the resolution of failed insured institutions to provide liquidity to depositors promptly, enhance market discipline, ensure equitable treatment of depositors at different institutions and reduce the FDIC's costs by preserving the franchise value of a failed institution.

(b) *Definitions*—(1) *A covered institution* means an insured depository institution which, based on items as defined in Reports of Income and Condition or Thrift Financial Reports filed with the applicable federal regulator, has at least $2 billion in domestic deposits and at least either:

(i) 250,000 deposit accounts; or

(ii) $20 billion in total assets,

regardless of the number of deposit accounts.

(2) *Domestic deposits, number of deposit accounts and total assets* are as defined in the instructions for the filing of Reports of Income and Condition and Thrift Financial Reports, as applicable to the insured depository institution for determining whether it qualifies as a Covered Institution. A *foreign deposit* means an uninsured deposit liability maintained in a foreign branch of an insured depository institution. An *international banking facility deposit* is as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)). *A demand deposit account, NOW account, money market deposit account, savings deposit account and time deposit account* are as defined in the instructions for the filing of Reports of Income and Condition and Thrift Financial Reports.

(3) *Sweep account arrangements* consist of a deposit account linked to an interest-bearing investment vehicle whereby funds are swept to and from the deposit account according to prearranged rules, usually on a daily basis. *Class A sweep account*

arrangements are those where: The interest-bearing investment vehicle is another domestic deposit account in an office of the Covered Institution; or for the purposes of the movement of funds to the interest-bearing investment vehicle, funds are wired from the insured depository institution to a separate legal entity other than the Covered Institution. *Class B sweep account arrangements* are all other *sweep account arrangements.*

(4) *Automated credit account arrangements* consist of a deposit account into which funds are automatically credited from an interest-bearing investment vehicle where the funds in the interest-bearing investment vehicle were not invested by prearranged rules.

(5) *Non-covered institution* means an insured depository institution that does not meet the definition of a covered institution.

(6) *Provisional hold* means an effective restriction on access to some or all of a deposit or other liability account after the failure of an insured depository institution.

(c) *Posting and removing provisional holds.* (1) A covered institution shall have in place an automated process for implementing a provisional hold on domestic deposit accounts, foreign deposit accounts and Class B sweep and automated credit account arrangements immediately following the determination of the close-of-business deposit account balances, as prescribed in section 360.8, at the failed covered institution.

(2) The system requirements under paragraph (c)(1) of this section must have the capability of placing the provisional holds prescribed under that provision no later than 9 a.m. local time the day following the FDIC Cutoff Point, as defined in § 360.8(b)(3).

(3) Pursuant to instructions to be provided by the FDIC, *a Covered Institution* must notify the FDIC of the person(s) responsible for producing the standard data download and administering provisional holds, both while the functionality is being constructed and on an on-going basis.

(4) For deposit accounts held in domestic offices of an insured depository institution, the provisional hold algorithm must be designed to exempt accounts below a specific account balance threshold, as determined by the FDIC. The account balance threshold could be any amount, including zero. For accounts above the account balance threshold determined by the FDIC, the algorithm must be designed to calculate and place a hold equal to the dollar amount of funds in excess of the account balance threshold multiplied by the provisional hold percentage determined by the FDIC. The provisional hold percentage could be any amount, from zero to one hundred percent. The account balance threshold as well as the provisional hold percentage could vary for the following four categories, as the *Covered Institution* customarily defines consumer accounts:

(i) Consumer demand deposit, NOW and money market deposit accounts;

(ii) Other consumer deposit accounts (time deposit and savings accounts, excluding NOW and money market deposit accounts);

(iii) Non-consumer demand deposit, NOW and money market deposit accounts; and

(iv) Other non-consumer deposit accounts (time deposit and savings accounts, excluding NOW and money market deposit accounts).

(5) For deposit accounts held in foreign offices of an insured depository institution, other than those connected to a Class B sweep or automated credit arrangements, the provisional hold algorithm will be the same as for deposit accounts, except that the account balance threshold and the hold percentage may vary based on the country in which the account is located.

(6) For international banking facility deposits, other than those connected to a Class B sweep or automated credit arrangements, the provisional hold algorithm will be the same as for deposit accounts, except that the account balance threshold and the hold percentage may differ.

(7) For the interest-bearing investment vehicle of a Class B sweep arrangement, the provisional hold algorithm must be designed with the capability to place a provisional hold on the interest-bearing investment vehicle with possibly a different account balance threshold and a different hold percentage according to the type of interest-bearing investment vehicle.

(8) For the interest-bearing investment vehicle of an automated credit account arrangement, the provisional hold algorithm must be designed with the capability to place a provisional hold on the interest-bearing investment vehicle with possibly a different account balance threshold and a different hold percentage according to the type of interest-bearing investment vehicle.

(9) The automated process for provisional holds required by paragraph (c)(1) of this section must include the capability of removing provisional holds in batch mode and, during the same processing cycle, applying debits, credits or additional holds on the deposit accounts from which the provisional holds were removed, as determined by the FDIC.

(d) *Providing a standard data format for generating deposit account and customer data.* (1) A covered institution must have in place practices and procedures for providing the FDIC in a standard format upon the close of any day's business with required account and customer data, for all deposit accounts held in domestic and foreign offices and interest-bearing investment accounts connected with Class B sweep and automated credit arrangements. Such standard data files are to be created through a mapping of pre-existing data elements and internal institution codes into standard data formats.

(2) The requirements of paragraph (d)(1) of this section shall be provided in five separate files, as indicated in the appendices to this Part 360.

(3) Upon request by the FDIC, a covered institution must submit the data required by paragraph (d)(1) of this section to the FDIC, in a manner prescribed by the FDIC.

(4) In providing the data required under paragraph (d)(1) of this section to the FDIC, the *Covered Institution* must be able to reconcile the total deposit balances and the number of deposit accounts to the institution's subsidiary system control totals.

(e) *Implementation requirements.* (1) A covered institution must comply with the requirements of this section no later than eighteen months after the effective date of this section.

(2) An insured depository institution not within the definition of a covered institution on the effective date of this section must comply with the requirements of this section no later than eighteen months following the end of the second calendar quarter for which it meets the criteria for a covered institution.

(3) Upon the merger of two or more non-covered institutions, if the resulting institution meets the criteria for a covered institution, that covered institution must comply with the requirements of this section no later than eighteen months after the effective date of the merger.

(4) Upon the merger of two or more covered institutions, the merged institution must comply with the requirements of this section within eighteen months following the effective date of the merger. This provision, however, does not supplant any preexisting implementation date requirement, in place prior to the date of the merger, for the individual covered institution(s) involved in the merger.

(5) Upon the merger of one or more covered institutions with one or more non-covered institutions, the merged institution must comply with the requirements of this section within eighteen months following the effective date of the merger. This provision, however, does not supplant any preexisting implementation date requirement for the individual covered institution(s) involved in the merger.

(6) Notwithstanding the general requirements of this paragraph (e), on a case-by-case basis, the FDIC may accelerate, upon notice, the implementation timeframe of all or part of the requirements of this section for a covered institution that either: Has a composite rating of 3, 4, or 5 under the Uniform Financial Institution's Rating System; or is undercapitalized as defined under the prompt corrective action provisions of 12 CFR part 325. In implementing this paragraph (e)(6), the FDIC must consult with the covered institution's primary federal regulator and consider the:

(i) Complexity of the institution's deposit systems and operations;

(ii) Extent of the institution's asset quality difficulties;

(iii) Volatility of the institution's funding sources;

(iv) Expected near-term changes in the institution's capital levels; and

(v) Other relevant factors appropriate for the FDIC to consider in its roles as insurer and possible receiver of the institution.

(7) Notwithstanding the general requirements of this paragraph (e), a covered institution may request, by letter, that the FDIC extend the deadline for complying with the requirements of this section. A request for such an extension is subject to the FDIC's rules of general applicability under 12 CFR 303.251.

(f) *Testing requirements.* Covered institutions must provide appropriate assistance to the FDIC in its testing of the systems required by this section. The FDIC will provide testing details to covered institutions through the issuance of subsequent procedures and/or guidelines.

3. Add new Appendices A through F to Part 630 to read as follows:

Appendix A to Part 630—Deposit File Structure

A. This is the structure for the data file to provide deposit data to the FDIC. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in a tab- or pipe-delimited format. Each file name will contain the institution's FDIC Certificate Number, an indication that it is a deposit file type and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit to the *Covered Institution* the encryption algorithm over *FDICconnect.*

B. The total deposit balances and the number of deposit accounts in each deposit file must be reconciled to the subsidiary system control totals.

C. The FDIC intends to fully utilize a *Covered Institution's* understanding of its customers and the data maintained around deposit accounts. Should additional information be available to the *Covered Institution* to help the FDIC more quickly complete its insurance determination process, it may add this information to the end of this data file. Should additional data elements be provided, a complete data dictionary for these elements must be supplied along with a description of how this information could be best used to establish account ownership or insurance category.

D. The deposit data elements provide information specific to deposit account balances and account data. The sequencing of these elements, their physical data structures and the field data format and field length must be provided to the FDIC along with the data structures identified below.

E. A header record will also be required at the beginning of this file. This record will contain the number of accounts to be included in this file, the maximum number of characters contained in largest account title field maintained within the deposit file and the maximum number of characters contained in largest address field maintained within the deposit file.

Note: Each record must contain the account title/name and current account statement mailing address. Fields 16–32 relate to the account name and address information. Some systems provide for separate fields for account title/name, street address, city, state, ZIP, and country, all of which are parsed out. Others systems may simply provide multiple lines for name, street address, city, state, ZIP, with no distinction. Populate fields that best fit the system's data, either fields 16–26 or fields 27–32.

Field name	Field description	Comments	Format
1. DP_Acct_Identifier	Account Identifier The primary field used to identify the account. This field may be the Account Number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier–2	Account Identifier–2 If necessary, the second element used to identify the account.		Character (25).
3. DP_Acct_Identifier–3	Account Identifier–3 If necessary, the third element used to identify the account.		Character (25).
4. DP_Acct_Identifier–4	Account Identifier–4 If necessary, the fourth element used to identify the account.		Character (25).
5. DP_Acct_Identifier–5	Account Identifier–5 If necessary, the fifth element used to identify the account.		Character (25).
6. DP_Sub_Acct_Identifier	Sub-Account Identifier If available, the sub-account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. DP_Bank_No	Bank Number The bank number assigned to the deposit account.		Character (15).

Field name	Field description	Comments	Format
8. DP_Tax_ID	Tax ID The tax identification number maintained on the account.	For consumer accounts, typically, this would be the primary account holder's social security number ("SSN"). For business accounts it would be the federal tax identification number ("TIN"). Hyphens are optional in this field.	Character (15).
9. DP_Tax_Code	Tax ID Code The type of the tax identification number. Possible values are: • S = Social Security Number. • T = Federal Tax Identification Number. • O = Other.	Generally deposit systems have flags or indicators set to indicate whether the number is an SSN or TIN.	Character (1).
10. DP_Branch	Branch Number The branch or office associated with the account.	In lieu of a branch number this field may represent a specialty department or division.	Character (15).
11. DP_Cost_Center	Cost Center or G\L Code The identifier used for organization reporting or ownership of the account. Insert null value if the cost center is not carried in the deposit record.	This field ties to the general ledger accounts.	Character (20).
12. DP_Dep_Type	Deposit Type Indicator The type of deposit by office location. Possible values are: • D = Deposit (Domestic). • F = Foreign Deposit.	A deposit—also called a "domestic deposit"—includes only deposit liabilities payable in the United States, typically those deposits maintained in a domestic office of an insured depository institution, as defined in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)). A foreign deposit is a deposit liability in a foreign branch payable solely at a foreign branch or branches.	Character (1).
13. DP_Currency_Type	Currency Type The ISO 4217 currency code		Character (3).
14. DP_Ownership_Ind	Customer Ownership Indicator The type of ownership at the account level. Possible values are: • S = Single. • J = Joint Account. • P = Partnership account. • C = Corporation. • B = Brokered Deposits. • I = IRA Accounts. • U = Unincorporated Association. • R = Revocable Trust. • IR = Irrevocable Trust. • G = Government Accounts. • E = Employee Benefit Plan Accounts. • O = Other.	*Single:* Accounts owned by an individual and those accounts held as Minor Accounts, Estate Accounts, Non-Minor Custodian/Guardian Accounts, Attorney in Fact Accounts and Sole Proprietorships. *Joint Account:* Accounts owned by two or more individuals, but does not include the ownership of a Payable on Death Account or Trust Account. *Partnership Account:* Accounts owned by a Partnership. *Corporation:* Accounts owned by a Corporation (*e.g.* Inc., L.L.C., or P.C.). *Brokered Deposits:* Accounts placed by a deposit broker who acts as an intermediary for the actual owner or sub-broker. *IRA Accounts:* Accounts for which the owner has the right to direct how the funds are invested including Keoghs and other Self-Directed Retirement Accounts. *Unincorporated Association:* An account owned by an association of two or more persons formed for some religious, educational, charitable, social or other non-commercial purpose. *Revocable Trusts:* Including PODs and formal revocable trusts (*e.g.* Living Trusts, Intervivos Trusts or Family Trusts).	Character (2).

Field name	Field description	Comments	Format
		Irrevocable Trusts: Accounts held by a trust established by statute or written trust in which the grantor relinquishes all power to revoke the trust. *Government Accounts:* Accounts owned by a government entity (*e.g.* City, State, County or Federal government entities and their sub-divisions). *Employee Benefit Plan:* Accounts established by the administrator of an Employee Benefit Plan including defined contribution, defined benefit and employee welfare plans. *Other Accounts:* Accounts owned by an entity not described above.	
15. DP_Prod_Cat	Product Category The product classification. Possible values are: • DDA = Non-Interest Bearing Checking accounts. • NOW = Interest Bearing Checking accounts. • MMA = Money Market Deposit Accounts. • SAV = Other savings accounts. • CDS = Time Deposit accounts and Certificate of Deposit accounts, including any accounts with specified maturity dates that may or may not be renewable.	Product Category is sometimes referred to as ''application type'' or ''system type''.	Character (3).
16. DP_Stat_Code	Status Code Status or condition of the account. Possible values are: • O = Open. • D = Dormant. • I = Inactive. • E = Escheatment. • A = Abandoned. • C = Closing. • R = Restricted/Frozen/Blocked.		Character (1).
17. DP_Acct_Title_1	Account Title Line 1 Account styling or titling of the account.	These data will be used to identify the owners of the account.	Character (100).
18. DP_Acct_Title_2	Account Title Line 2 If available, the second account title line.		Character (100).
19. DP_Acct_Title_3	Account Title Line 3 If available, the third account title line.		Character (100).
20. DP_Acct_Title_4	Account Title Line 4 If available, the fourth account title line.		Character (100).
21. DP_Street_Add_Ln_1	Street Address Line 1 The current account statement mailing address of record.		Character (100).
22. DP_Street_Add_Ln_2	Street Address Line 2 If available, the second mailing address line.		Character (100).
23. DP_Street_Add_Ln_3	Street Address Line 3 If available, the third mailing address line.		Character (100).
24. DP_City	City The city associated with the mailing address.		Character (50).
25. DP_State	State The state abbreviation associated with the mailing address.	Use a two-character state code (official U.S. Postal Service abbreviations).	Character (2).
26. DP_ZIP	ZIP The ZIP + 4 code associated with the mailing address.	If the ''+4'' code is not available provide only the 5-digit ZIP code. Hyphens are optional in this field.	Character (10).

Field name	Field description	Comments	Format
27. DP_Country	Country The country associated with the mailing address.	Provide the country name or the standard IRS country code.	Character (10).
28. DP_NA_Line_1	Name/Address Line 1 Alternate name/address format for the current account statement mailing address of record, first line.	Fields 27–32 are to be used if address data are not parsed to populated Fields 16–26.	Character (100).
29. DP_NA_Line_2	Name/Address Line 2 Alternate name/address format, second line.		Character (100).
30. DP_NA_Line_3	Name/Address Line 3 Alternate name/address format, third line.		Character (100).
31. DP_NA_Line_4	Name/Address Line 4 Alternate name/address format, fourth line.		Character (100).
32. DP_NA_Line_5	Name/Address Line 5 Alternate name/address format, fifth line.		Character (100).
33. DP_NA_Line_6	Name/Address Line 6 Alternate name/address format, sixth line.		Character (100).
34. DP_Cur_Bal	Current Balance The current balance in the account at the end of business on the effective date of this file.	This balance should not be reduced by float or holds. For CDs and time deposits, the balance should reflect the principal balance plus any interest paid and available for withdrawal not already included in the principal (do not include accrued interest). The total of all current balances in this file should reconcile to the total deposit trial balance totals or other summary reconciliation of deposits performed by the institution.	Decimal (14,2).
35. DP_Int_Rate	Interest Rate The current interest rate in effect for interest bearing accounts.	Interest rate should be expressed in decimal format, *i.e.*, 2.0% should be represented as 0.020000000.	Decimal (10,9).
36. DP_Bas_Days	Basis Days Basis on which interest is to be paid. Possible values are: • 1 = 30/360. • 2 = 30/365. • 3 = 365/365 (actual/actual). • 4 = 365/366.		Character (1).
37. DP_Int_Type	Interest Type Type of interest to be paid. Possible values are: • S = Simple. • D = Daily Compounding. • C = Continuous Compounding.		Character (1).
38. DP_Int_Factor	Interest Rate Daily Factor The daily interest rate factor used for generating interest.	Interest rate should be expressed in decimal format, *i.e.*, 2.0% should be represented as 0.020000000.	Decimal (10,9).
39. DP_Acc_Int	Accrued Interest The amount of interest that has been earned but not yet paid to the account as of the date of the file.		Decimal (14,2).
40. DP_Lst_Int_Pd	Date Last Interest Paid The date through which interest was last paid to the account.		Date (YYYYMMDD).
41. DP_Lst_Deposit	Date Last Deposit The date of the last deposit transaction posted to the account.	For example, a deposit that included checks and/or cash.	Date (YYYYMMDD).
42. DP_Int_Mon_Base	Interest Month Base The basis for determining calculations to the account. Possible values are: • A = Actual number of days in the month. • M = 30-day month.		Character (1).
43. DP_Int_Term_No	Interest Term Number The number of months in the current interest term.		Decimal (3,0).

Field name	Field description	Comments	Format
44. DP_Nxt_Mat	Date of Next Maturity For CD and time deposit accounts, the next date the account is to mature.	For non-renewing CDs that have matured and are waiting to be redeemed, this date may be in the past.	Date (YYYYMMDD).
45. DP_Open_DT	Account Open Date The date the account was opened.	If the account had previously been closed and re-opened, this should reflect the most recent re-opened date.	Date (YYYYMMDD).
46. DP_Sweep_Code	Sweep Code Indicates if the account is a sweep account. Possible values are: • Y = Yes. • N = No.		Character (1).
47. DP_Hold_To_Post	Full Hold on the account: Indicator if all postings to this account are restricted. Possible values are: • Y = Yes. • N = No.		Character (1).
48. DP_Issue_Val_Amt	Issued Value Amount The value of the current CD when issued.	For CDs only	Decimal (14,2).
49. DP_Int_CD_Cde	Type of Interest for CD Possible values are: • C = Rate Change Allowed. • N = Rate Change Not Allowed. • R = Change Rate to Default at Renewal. • T = Rate Change Allowed Only During the Term.	For CDs only	Character (1).
50. DP_IRA_Cde	IRA Code The type of IRA. Possible values are: • C = Corporate Retirement. • E = Educational IRA. • I = IRA Account. • K = Keogh Account. • R = Roth IRA Account. • S = SEP Account. • T = Transitional Roth IRA. • V = Versa Account. • H = Health Savings Account.	Optional code field to be used if available to help further identify the types of IRA accounts.	Character (1).
51. Deposit_Class_Type	Deposit Class Type The deposit class. Possible values are: • RTL = Retail. • FED = Federal government. • STATE = State government. • COMM = Commercial. • CORP = Corporate. • BANK = Bank Owned. • DUE TO = Other Banks.	The institution may also use more or fewer class types.	Character (10).
52. DP_Product_Class_Cde	Deposit Class Codes The deposit class codes. Possible values are: RTL • 1 = Payable on Death. • 2 = Individual. • 3 = Living Trust—Intervivos or Family. • 4 = Irrevocable Trust (includes Educational IRAs). • 5 = Estate. • 6 = Attorney in Fact. • 7 = Minor—(includes all variations of Uniform Gifts to Minor Accounts). • 8 = Bankruptcy Personal. • 9 = Pre-Need Burial. • 10 = Escrow. • 11 = Representative Payee/Beneficiary.	These Product Class codes are used in conjunction with the Deposit Class Types in field 51. This field is to be used in concert with fields 12 and 13 identified above to enable the financial institution to capture more detailed information concerning account types. It is the intent of the FDIC to have the financial institution map their detailed account type to the codes identified in this field. The institution may also use additional codes, but in this event the institution must supply the detailed description and code value for each additional code used. If no additional account product type detail is available, then this field should be left blank.	Character (2).

Field name	Field description	Comments	Format
	• 12 = Sole Proprietorship. • 13 = Joint. • 14 = Non-Minor Custodian/Guardian. • 15 = Other Retail. FED • 16 = FHA. • 17 = Federal Government. STATE • 18 = City. • 19 = State. • 20 = County, Clerk of Court. • 21 = Other State. COMMERCIAL • 22 = Business Escrow. • 23 = Bankruptcy. • 24 = Club. • 25 = Church. • 26 = Unincorporated Association. • 27 = Unincorporated Non Profit. • 28 = Other Commercial. CORPORATION • 29 = Business Trust. • 30 = Business Agent. • 31 = Business Guardian. • 32 = Incorporated Association. • 33 = Incorporated Non Profit. • 34 = Corporation. • 35 = Corporate Partnership. • 36 = Corporate Partnership Trust. • 37 = Corporate Agent. • 38 = Corporate Guardian. • 39 = Pre-Need Funeral Trust. • 40 = Limited Liability Incorporation. • 41 = LLC partnership. • 42 = Lawyer Trust. • 43 = Realtor Trust. • 44 = Other Corporation. BANK • 45 = Certified & Official Checks, Money Orders, Loan Disbursements Checks, and Expense Checks. • 46 = ATM Settlement. • 47 = Other Bank Owned Accounts. DUE TO (Other Banks) • 48 = Due to U.S. Banks. • 49 = Due to U.S. Branches of Foreign Banks. • 50 = Due to Other Depository Institutions. • 51 = Due to Foreign Banks. • 52 = Due to Foreign Branches of U.S. banks. • 53 = Due to Foreign Governments and Official Institutions.		
53. DP_Routing_No	Bank Routing Number The routing/transit number.	This field is identifier information for ACH transactions generated by the FDIC.	Character (15).

Appendix B to Part 630—Class B Sweep/Automated Credit Account File Structure

A. This is the structure of the data file to provide information to the FDIC on funds residing in investment vehicles linked to each non-closed deposit account or sub-account: Involved in Class B sweep activity; or which accepts automated credits. A single record should be used for each instance where funds affiliated with the deposit account are held in an alternative investment vehicle. For any alternative investment vehicle, a separate account may or may not exist. If an account exists for the investment vehicle it should be noted in the record. If no account exists then a null value for the Class B Sweep/Automated Credit Account Identifiers should be provided, but the remainder of the data fields defined below should be populated.

B. For data provided in the Class B Sweep/Automated Credit Account File the total

account balances and the number of accounts must be reconciled to subsidiary system control totals.

Field name	Field description	Comments	Format
1. DP_Acct_Identifier	Account Identifier The primary field used to identify the account from which funds are swept or debited. The field may be the Account number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier–2	Account Identifier–2 If necessary, the second element used to identify the account from which funds are swept or debited.		Character (25).
3. DP_Acct_Identifier–3	Account Identifier–3 If necessary, the third element used to identify the account from which funds are swept or debited.		Character (25).
4. DP_Acct_Identifier–4	Account Identifier–4 If necessary, the fourth element used to identify the account from which funds are swept or debited.		Character (25).
5. DP_Acct_Identifier–5	Account Identifier–5 If necessary, the fifth element used to identify the account from which funds are swept or debited.		Character (25).
6. DP_Sub_Acct_Identifier	Sub-Account Identifier If available, the sub-account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. SW_Acct_Identifier	Class B Sweep/Automated Credit Account Identifier. The primary field used to identify the account into which funds are swept or credited. This field may be the Account Number.	Funds may be swept into an investment vehicle not represented as an account. In this case this field should be a null value. The Class B Sweep/Automated Credit Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
8. SW_Acct_Identifier–2	Class B Sweep/Automated Credit Account Identifier–2. If necessary, the second element of the account identifier used to identify the account into which funds are swept or credited.		Character (25).
9. SW_Acct_Identifier–3	Class B Sweep/Automated Credit Account Identifier–3. If necessary, the third element of the account identifier used to identify the account into which funds are swept or credited.		Character (25).
10. SW_Acct_Identifier–4	Class B Sweep/Automated Credit Account Identifier–4. If necessary, the fourth element of the account identifier used to identify the account into which funds are swept or credited.		Character (25).
11. SW_Acct_Identifier–5	Class B Sweep/Automated Credit Account Identifier–5. If necessary, the fifth element of the account identifier used to identify the account into which funds are swept or credited.		Character (25).

Field name	Field description	Comments	Format
12. SW_Sub_Acct_Identifier	Class B Sweep/Automated Credit Sub-Account Identifier. If available, the sub-account identifier for the account.		Character (25).
13. SW_Type	Class B Sweep/Automated Credit Type. The investment vehicle. Possible values are: • RE = Repurchase Agreement • DD = Deposit Held in a Domestic Office. • DF = Deposit Held in a Foreign Office. • IBF = Deposit Held in an International Banking Facility. • AI = Deposit Held in an Affiliated Depository Institution. • FF = Federal Funds. • CP = Commercial Paper. • OT = Other.		Character (3).
14. SW_Inv_Amount	Fund Balance in Class B Sweep/Automated Credit Investment Vehicle. Dollar amount residing in the investment vehicle.		Decimal (14,2).
15. DP_Currency_Type	Currency Type The ISO 4217 currency code.		Character (3).
16. SW_Hold_Amount	FDIC Hold Amount Amount of FDIC hold on funds residing in the investment vehicle.		Decimal (14,2).
17. SW_Sweep_Interval	Sweep/Investment Frequency The frequency with which the sweep or investment occurs. Possible values are: • D = Daily. • W = Weekly. • BW = Bi Weekly. • M = Monthly. • BM = Bi-Monthly. • Q = Quarterly. • O = Other.		Character (2).

Appendix C to Part 630—Hold File Structure

This is the structure of the data file to provide information to the FDIC for each legal or collateral hold placed on a deposit account or sub-account. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in a tab- or pipe-delimited format. Each file name will contain the institution's FDIC Certificate Number, an indication that it is a hold data file type and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit the encryption algorithm over FDIC*connect*.

Field name	Field Description	Comments	Format
1. DP_Acct_Identifier	Account Identifier The primary field used to identify the account. This field may be the Account Number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier–2	Account Identifier–2 If necessary, the second element used to identify the account.		Character (25).
3. DP_Acct_Identifier–3	Account Identifier–3 If necessary, the third element used to identify the account.		Character (25).
4. DP_Acct_Identifier–4	Account Identifier–4 If necessary, the fourth element used to identify the account.		Character (25).

Field name	Field Description	Comments	Format
5. DP_Acct_Identifier–5	Account Identifier–5 If necessary, the fifth element used to identify the account.		Character (25).
6. DP_Sub_Acct_Identifier	Sub-Account Identifier If available, the sub-account identifier for the account. If available, the sub-account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. HD_Hold_Amt	Hold Amount Dollar amount of the hold.		Decimal (14,2).
8. HD_Hold_Reason	Hold Reason Reason for the hold. Possible values are: • LN = Loan Collateral Hold. • LG = Court Order Hold. • FD = FDIC hold. • OT = Other (do not include daily operational type holds).		Character (2).
9. HD_Hold_Desc	Hold Description Description of the hold available on the system.		Character (255).
10. HD_Hold_Start_Dt	Hold Start Date The date the hold was initiated.		Date (YYYYMMDD).
11. HD_Hold_Exp_Dt	Hold Expiration Date The date the hold is to expire.		Date (YYYYMMDD).

Appendix D to Part 630—Customer File Structure

This is the structure of the data file to provide to the FDIC information related to each customer who has an account or sub-account reported in the deposit data or Class B sweep/automated credit account file. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in a tab- or pipe-delimited format. Each file name will contain the institution's FDIC Certificate Number, an indication that it is a customer file type and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit the encryption algorithm over FDIC*connect*.

Note: Each record must contain the customer's name and permanent legal address. Fields 4–12 relate to the customer name for individuals only. Fields 13–14 relate to the customer name for entities other than individuals. Some systems provide for separate fields for name, street address, city, state, ZIP, and country, all of which are parsed out. Other systems may simply provide multiple lines for name, street address, city, state, ZIP, with no distinction. In this case, certain name and address data elements must be parsed and provided in the appropriate fields.

Field name	Field description	Comments	Format
1. CS_Cust_Identifier	Customer Identifier The unique field used by the institution to identify the customer.		Character (25).
2. CS_Tax_ID	Customer Tax ID Number The tax identification number on record for the customer.	Hyphens are optional in this field	Character (11).
3. CS_Tax _Code	Customer Tax ID Code The type of the tax identification number of the customer. Possible values are: • S = Social Security Number. • T = Federal Tax Identification Number. • O = Other.		Character (1).
4. CS_Name_Line_1	Individual Customer Name Line 1 If available, the free-form name narrative of the customer, first line.		Character (100).
5. CS_Name_Line_2	Individual Customer Name Line 2 If available, the free-form name narrative of the customer, second line.		Character (100).
6. CS_Last_Name	Individual Customer Last Name For individuals, the customer's last name.	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (50).

Field name	Field description	Comments	Format
7. CS_First_Name	Individual Customer First Name For individuals, the customer's first name.	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (50).
8. CS_Middle_Name	Individual Customer Middle Name For individuals, the customer's middle name.	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (50).
9. CS_Suffix	Individual Professional Suffix For individuals, the suffix designating customer's academic, professional or honorary status, such as Esq., PhD., M.D., and D.D.S.	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (20).
10. CS_Generation	Individual Generational Suffix For individuals, the suffix designating the customer's generational status, such as Jr., Sr. or III.	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (10).
11. CS_Prefix	Individual Customer Prefix For individuals, the prefix of the customer, such as Rev., Dr., Mrs., Mr. or Ms.	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (10).
12. CS_Birth_Dt	Individual Customer Birth Date For individuals, the customer's birth date.		Date (YYYYMMDD).
13. CS_Ent_Name_Line_1	Entity Name Line 1 For entities other than individuals, the free-form name narrative of the customer, first line.		Character (100).
14. CS_Ent_Name_Line_2	Entity Name Line 2 If available for entities other than individuals, the free-form name narrative of the customer, second line.		Character (100).
15. CS_Nar_Addr_Line_1	Customer Address Line 1 If available, the free-form permanent legal address narrative for the customer, line one.		Character (100).
16. CS_Nar_Addr _Line_2	Customer Address Line 2 If available, the free-form permanent legal address narrative of the customer, line two.		Character (100).
17. CS_Nar_Addr _Line_3	Customer Address Line 3 If available, the free-form permanent legal address narrative of the customer, line three.		Character (100).
18. CS_Street_Address_1	Street Address Line 1 The permanent legal address of the customer, line one.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element.	Character (100).
19. CS_Street_Address_2	Street Address Line 2 The permanent legal address of the customer, line two.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element.	Character (100).
20. CS_City	City The city associated with the permanent legal address.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element.	Character (25).
21. CS_State	State The state abbreviation associated with the permanent legal address.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. Use a two-character state code (official U.S. Postal Service abbreviations).	Character (2).
22. CS_ZIP	ZIP The ZIP + 4 code associated with the permanent legal address.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. If the "+4" code is not available provide only the 5-digit ZIP code. Hyphens are optional in this field.	Character (10).
23. CS_Country	Country The country associated with the permanent legal address.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. Provide the name of the country or the standard IRS country code.	Character (10).

Field name	Field description	Comments	Format
24. CS_Telephone	Customer Telephone Number The telephone number on record for the customer.		Character (20).
25. CS_Email	Customer Email Address The e-mail address on record for the customer.		Character (150).

Appendix E to Part 630—Deposit-Customer Join File Structure

A. This is the structure of the data file to provide to the FDIC information necessary to link the records in the deposit and customer files. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in a tab- or pipe-delimited format. Each file name will contain the institution's FDIC Certificate Number, an indication that it is a join file type, and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit the encryption algorithm over FDIC*connect*.

B. The deposit-customer join file will have one or more records for each deposit account, depending on the number of relationships to each account. A simple individual account, for example, will be associated with only one record in the deposit-customer join file indicating the owner of the account. A joint account with two owners will be associated with two records in the deposit-customer join file, one for each owner. The deposit-customer join file will contain other records associated with a deposit account to designate, among other things, beneficiaries, custodians, trustees, and agents. This methodology allows the FDIC to know all of the possible relationships for an individual account and also whether a single customer is involved in many accounts.

Field name	FDIC field description	Comments	Format
1. CS_Cust_Identifier	Customer Identifier The unique field used by the institution to identify the customer.		Character (25).
2. DP_Acct_Identifier	Account Identifier The primary field used to identify the account. This field may be the Account Number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, the data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
3. DP_Acct_Identifier–2	Account Identifier–2 If necessary, the second element used to identify the account.		Character (25).
4. DP_Acct_Identifier–3	Account Identifier–3 If necessary, the third element used to identify the account.		Character (25).
5. DP_Acct_Identifier–4	Account Identifier–4 If necessary, the fourth element used to identify the account.		Character (25).
6. DP_Acct_Identifier–5	Account Identifier–5 If necessary, the fifth element used to identify the account.		Character (25).
7. CS_Rel_Code	Relationship Code The code indicating how the customer is related to the account. Possible values are: • ADM = Administrator. • AGT = Agent/ Representative. • ATF = Attorney For. • AUT = Authorized Signer. • BNF = Beneficiary. • CSV = Conservator. • CUS = Custodian. • DBA = Doing Business As. • EXC = Executor. • GDN = Guardian. • MIN = Minor. • PRI = Primary Owner. • SEC = Secondary Owner(s). • TTE = Trustee.	Institutions must map their relationship codes to the codes in the list to the right. If the institution maintains more than one relationship they must supply the additional relationship codes being utilized along with the code definition.	Character (5).
8. CS_Bene_Code	Beneficiary Type Code If the customer is considered a beneficiary, the type of account associated with this customer. Possible values are: • I = IRA. • T = Trust—Irrevocable. • R = Trust—Revocable. • M = Uniform Gift to Minor.	This includes beneficiaries on retirement accounts, trust accounts, minor accounts, and payable-on-death accounts.	Character (1).

Field name	FDIC field description	Comments	Format
	• P = Payable on Death. • O = Other.		

Appendix F to Part 360—Possible File Combinations for Deposit Data

A *Covered Institution* must provide deposit data using separate deposit, sweep, hold, customer, customer address and deposit-customer join files. The simplest file structure involves providing one of each file. This basic file format is shown in Figure 2.

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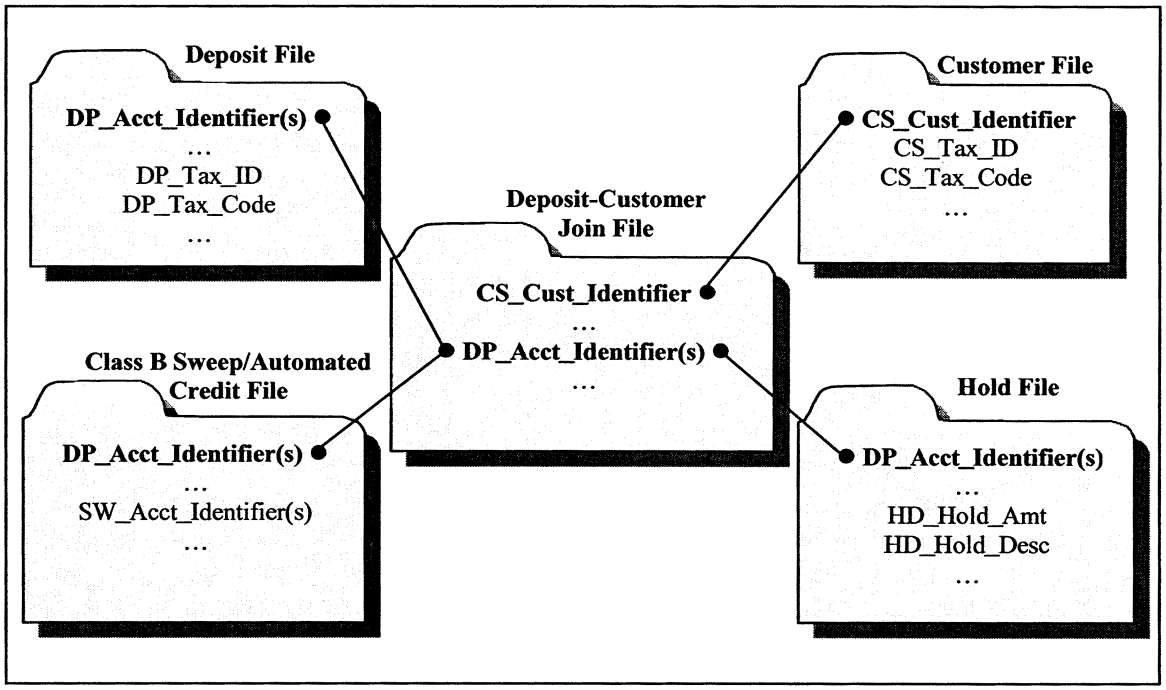
Figure 2. Basic File Structure.



Multiple combinations of deposit, sweep, hold, customer, customer address and deposit-customer join files are permissible, but only in the following circumstances:

1. Each separate deposit file must have companion hold and deposit-customer join files covering the same deposit accounts.
2. Each separate customer file must have a companion customer address file covering the same customers.
3. A single customer file may be submitted covering customers affiliated with deposit accounts in one or more deposit files as long as the customer file contains information on all of the customers affiliated with the deposit files.
4. Several customer files may be submitted as long as each separate customer file contains information on all of the customers affiliated with the associated deposit files.

Figure 3 shows a permissible file configuration using a single Customer File affiliated with Deposit File A and Deposit File B. As required, Deposit File A has a companion Hold File A and Deposit-Customer Join File A. The same is true for Deposit File B.

Another permissible combination of files is shown in Figure 4, which is a variation of the basic data file structure shown in Figure 2.

Federal Register

Monday,
January 14, 2008

Part V

Department of Education

Office of Innovation and Improvement; Overview Information; Arts in Education Model Development and Dissemination Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008; Notice

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Arts in Education Model Development and Dissemination Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.351D.

Dates:

Applications Available: January 14, 2008.

Deadline for Notice of Intent to Apply: February 13, 2008.

Deadline for Transmittal of Applications: March 14, 2008.

Deadline for Intergovernmental Review: May 13, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Arts in Education Model Development and Dissemination Grant (AEMDD) program supports the enhancement, expansion, documentation, evaluation, and dissemination of innovative, cohesive models that are based on research and have demonstrated that they effectively—(1) integrate standards-based arts education into the core elementary and middle school curriculum; (2) strengthen standards-based arts instruction in these grades; and (3) improve students' academic performance, including their skills in creating, performing, and responding to the arts. Projects funded through the AEMDD program are intended to increase the amount of nationally available information on effective models for arts education that integrate the arts with standards-based education programs.

Priorities: This competition includes one absolute priority, one competitive preference priority, and two invitational priorities.

Absolute Priority: This priority is from the notice of final priority, requirements, and definitions for this program, published in the **Federal Register** on March 30, 2005 (70 FR 16234). For FY 2008, and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

This priority supports projects that enhance, expand, document, evaluate, and disseminate innovative, cohesive models that are based on research and have demonstrated their effectiveness in (1) integrating standards-based arts education into the core elementary or middle school curriculum, (2) strengthening standards-based arts instruction in the elementary or middle school grades, and (3) improving the academic performance of students in elementary or middle school grades, including their skills in creating, performing, and responding to the arts.

In order to meet this priority, an applicant must demonstrate that the model project for which it seeks funding (1) serves only elementary school or middle school grades, or both, and (2) is linked to State and national standards intended to enable all students to meet challenging expectations and to improve student and school performance.

Note: *National standards* refers to the arts standards developed by the Consortium of National Arts Education Association. The standards outline what students should know and be able to do in the arts. These are not Department standards.

Competitive Preference Priority: This priority is from the notice of final priority published in the **Federal Register** on January 25, 2005 (70 FR 3586). For FY 2008 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 20 points to an application, depending on how well the application meets this competitive preference priority. These points are in addition to any points the application earns under the selection criteria.

When using the priority to give competitive preference to an application, we will review the applications using a two-stage review process. In the first stage, we will review the applications without taking the priority into account. In the second stage of the process, we will review the applications rated highest in the first stage of the process to determine whether they receive the competitive preference points. We will consider awarding additional (competitive preference) points only to those applicants with top-ranked scores on their selection criteria. We expect that approximately 30 applicants will receive these additional competitive preference points.

This priority is:

The Secretary establishes a priority for projects proposing an evaluation plan that is based on rigorous scientifically based research methods to assess the effectiveness of a particular intervention. The Secretary intends that this priority will allow program participants and the Department to determine whether the project produces meaningful effects on student achievement or teacher performance.

Evaluation methods using an experimental design are best for determining project effectiveness. Thus, when feasible, the project must use an experimental design under which participants—*e.g.*, students, teachers, classrooms, or schools—are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants—*e.g.*, students, teachers, classrooms, or schools—with non-participants having similar pre-program characteristics.

In cases where random assignment is not possible and participation in the intervention is determined by a specified cut-off point on a quantified continuum of scores, regression discontinuity designs may be employed.

For projects that are focused on special populations in which sufficient numbers of participants are not available to support random assignment or matched comparison group designs, single-subject designs such as multiple baseline or treatment-reversal or interrupted time series that are capable of demonstrating causal relationships can be employed.

Proposed evaluation strategies that use neither experimental designs with random assignment nor quasi-experimental designs using a matched comparison group nor regression discontinuity designs will not be considered responsive to the priority when sufficient numbers of participants are available to support these designs. Evaluation strategies that involve too small a number of participants to support group designs must be capable of demonstrating the causal effects of an intervention or program on those participants.

The proposed evaluation plan must describe how the project evaluator will collect—before the project intervention commences and after it ends—valid and reliable data that measure the impact of participation in the program or in the comparison group.

Points awarded under this priority will be determined by the quality of the proposed evaluation method. In determining the quality of the evaluation method, we will consider the extent to which the applicant presents

a feasible, credible plan that includes the following:

(1) The type of design to be used (that is, random assignment or matched comparison). If matched comparison, include in the plan a discussion of why random assignment is not feasible.

(2) Outcomes to be measured.

(3) A discussion of how the applicant plans to assign students, teachers, classrooms, or schools to the project and control group or match them for comparison with other students, teachers, classrooms, or schools.

(4) A proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation. An independent evaluator does not have any authority over the project and is not involved in its implementation.

In general, depending on the implemented program or project, under a competitive preference priority, random assignment evaluation methods will receive more points than matched comparison evaluation methods.

Invitational Priorities: For FY 2008 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1. Applications that support activities to enable students to achieve proficiency or advanced proficiency in mathematics.

Invitational Priority 2. Applications that support activities to enable students to achieve proficiency or advanced proficiency in reading.

While we will not score applicants based on the invitational priorities, we encourage applicants to take advantage of the competitive preference priority if their model allows them to do so.

Application Requirement

To be eligible for AEMDD funds, applicants must propose to address the needs of low-income children by carrying out projects that serve at least one elementary or middle school in which 35 percent or more of the children enrolled are from low-income families (based on data used in meeting the poverty criteria in Title I, Section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA)).

Definitions

As used in the absolute priority in this notice—

Arts includes music, dance, theater, media arts, and visual arts, including folk arts.

Integrating means (i) encouraging the use of high-quality arts instruction in other academic/content areas and (ii) strengthening the place of the arts as a core academic subject in the school curriculum.

Based on research, when used with respect to an activity or a program, means that, to the extent possible, the activity or program is based on the most rigorous theory, research, and evaluation data available and is effective in improving student achievement and performance and other program objectives.

As used in the competitive preference priority in this notice—

Scientifically based research (section 9101(37) of the ESEA as amended by NCLB, 20 U.S.C. 7801(37)):

(A) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) Includes research that—

(i) Employs systematic, empirical methods that draw on observation or experiment;

(ii) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Random assignment or experimental design means random assignment of students, teachers, classrooms, or schools to participate in a project being evaluated (treatment group) or not participate in the project (control group). The effect of the project is the difference in outcomes between the treatment and control groups.

Quasi-experimental designs include several designs that attempt to approximate a random assignment design.

Carefully matched comparison groups design means a quasi-experimental design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome.

Regression discontinuity design means a quasi-experimental design that closely approximates an experimental design. In a regression discontinuity design, participants are assigned to a treatment or control group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Eligible students, teachers, classrooms, or schools above a certain score (''cut score'') are assigned to the treatment group and those below the score are assigned to the control group. In the case of the scores of applicants' proposals for funding, the ''cut score'' is established at the point where the program funds available are exhausted.

Single subject design means a design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population.

Treatment reversal design means a single subject design in which a pre-treatment or baseline outcome measurement is compared with a post-treatment measure. Treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. For example, this design might be used to evaluate a behavior modification program for disabled students with behavior disorders.

Multiple baseline design means a single subject design to address concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

Interrupted time series design means a quasi-experimental design in which the outcome of interest is measured

multiple times before and after the treatment for program participants only.

Program Authority: 20 U.S.C. 7271.

Applicable Regulations: (a) The Education Department General Administration Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priority, requirements, and definitions for this program, published in the **Federal Register** on March 30, 2005 (70 FR 16234). (c) The notice of final priority for Scientifically Based Evaluation Methods, published in the **Federal Register** on January 25, 2005 (70 FR 3586).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,500,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2009 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $225,000–$275,000 for the first year of the project. Funding for the second, third, and fourth years is subject to the availability of funds and the approval of continuation awards (see 34 CFR 75.253).

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Note: The first 12 months of the project period may be used to build capacity to effectively carry out the comprehensive activities involved in the evaluation plan described in the competitive preference priority.

III. Eligibility Information

1. *Eligible Applicants:*

(1) One or more local educational agencies (LEAs), including charter schools that are considered LEAs under State law and regulations, that may work in partnership with one or more of the following:

- A State or local non-profit or governmental arts organization,
- A State educational agency (SEA) or regional educational service agency,
- An institution of higher education, or
- A public or private agency, institution, or organization, such as a community- or faith-based organization; or

(2) One or more State or local non-profit or governmental arts organizations that must work in partnership with one or more LEAs and may partner with one or more of the following:

- An SEA or regional educational service agency,
- An institution of higher education, or
- A public or private agency, institution, or organization, such as a community- or faith-based organization.

Note: If more than one LEA or arts organization wishes to form a consortium and jointly submit a single application, they must follow the procedures for group applications described in 34 CFR 75.127 through 75.129 of EDGAR.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Under section 5551(f)(2) of the ESEA, the Secretary requires that assistance provided under this program be used only to supplement, and not to supplant, any other assistance or funds made available from non-Federal sources for the activities assisted under this program. This restriction also has the effect of allowing projects to recover indirect costs only on the basis of a restricted indirect cost rate, according to the requirements in 34 CFR 75.563 and 34 CFR 76.564 through 76.569. As soon as they decide to apply, applicants are urged to contact the ED Indirect Cost Group at (202) 377–3833 for guidance about obtaining a restricted indirect cost rate to use on the Budget Information form (ED Form 524) included with the application package.

3. *Coordination Requirement:* Under section 5551(f)(1) of the ESEA, the Secretary requires that each entity funded under this program coordinate, to the extent practicable, each project or program carried out with funds awarded under this program with appropriate activities of public or private cultural agencies, institutions, and organizations, including museums, arts education associations, libraries, and theaters.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.351D.

You can obtain the application package for the program via the Internet at the following address: *http://www.ed.gov/programs/artsedmodel/applicant.html.*

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this program. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. This e-mail notification should be sent to Diane Austin at *artsdemo@ed.gov.*

Applicants that fail to provide this e-mail notification may still apply for funding.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the application narrative (Part III) to the equivalent of no more than 30 single-sided pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

3. *Submission Dates and Times:*

Applications Available: January 14, 2008.

Deadline for Notice of Intent to Apply: February 13, 2008.

Deadline for Transmittal of Applications: March 14, 2008.

Applications for grants under this competition must be submitted electronically using the *Grants.gov Apply* site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: May 13, 2008.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications.

Applications for grants under the AMEDD Program, CFDA Number 84.351D, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for AMEDD Program at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.351, not 84.351D).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp).* These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Diane Austin, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W223, Washington, DC 20202–5950. *FAX:* (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 351D),
400 Maryland Avenue, SW.,
Washington, DC 20202–4260;

or

By mail through a commercial carrier:

U.S. Department of Education,
Application Control Center, Stop 4260,
Attention: (CFDA Number 351D),
7100 Old Landover Road,
Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 351D),
550 12th Street, SW.,
Room 7041, Potomac Center Plaza,
Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. *Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from section 34 CFR 75.210. The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. The *Note* following selection criterion (5) is guidance to help applicants in preparing their applications and is not required by statute or regulations. The selection criteria are as follows:

(1) *Need for project* (10 points). The Secretary considers the need for the proposed project by considering the following factors:

(a) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure.

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) *Significance* (20 points). The Secretary considers the significance of the proposed project by considering the following factors:

(a) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(c) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(3) *Quality of the project design* (35 points). The Secretary considers the quality of the design of the proposed project by considering the following factors:

(a) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practices.

(b) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(c) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(d) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(4) *Quality of the management plan* (15 points). The Secretary considers the quality of the management plan for the proposed project by considering the following factors:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(b) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(c) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(5) *Quality of the project evaluation* (20 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project by considering the following factors:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Note: A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The evaluation plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning, or other important outcomes for project participants. More specifically, the plan should identify the individual or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when these instruments will be developed; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and about effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants should budget for a three-day meeting for project directors to be held in Washington, DC.

4. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on grantee reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* In response to the Government Performance and Results Act of 1993 (GPRA), the Department has established the following two performance measures for assessing the effectiveness of the AEMDD program: (1) The percentage of students participating in arts model projects funded through the AEMDD program who demonstrate proficiency in mathematics compared to those in control or comparison groups and (2) the percentage of students participating in arts model projects who demonstrate proficiency in reading compared to those in control or comparison groups. Grantees funded under this competition will be expected to collect and report to the Department data on the numbers of these students applicable to their project.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Diane Austin, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W223, Washington, DC 20202–5950. *Telephone:* (202) 260–1280 or by *e-mail: artsdemo@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS) at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

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Dated: January 9, 2008.

Morgan S. Brown,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E8–449 Filed 1–11–08; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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. 660/P.L. 110–177

Court Security Improvement Act of 2007 (Jan. 7, 2008; 121 Stat. 2534)

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H.R. 2640/P.L. 110–180

NICS Improvement Amendments Act of 2007 (Jan. 8, 2008; 121 Stat. 2559)

Last List January 7, 2008

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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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Title	Stock Number	Price	Revision Date
1	(869–062–00001–4)	5.00	[4] Jan. 1, 2007
2	(869–062–00002–2)	5.00	Jan. 1, 2007
3 (2006 Compilation and Parts 100 and 102)	(869–062–00003–1)	35.00	[1] Jan. 1, 2007
4	(869–062–00004–9)	10.00	[5] Jan. 1, 2007
5 Parts:			
1–699	(869–062–00005–7)	60.00	Jan. 1, 2007
700–1199	(869–062–00006–5)	50.00	Jan. 1, 2007
1200–End	(869–062–00007–3)	61.00	Jan. 1, 2007
6	(869–062–00008–1)	10.50	Jan. 1, 2007
7 Parts:			
1–26	(869–062–00009–0)	44.00	Jan. 1, 2007
27–52	(869–062–00010–3)	49.00	Jan. 1, 2007
53–209	(869–062–00011–1)	37.00	Jan. 1, 2007
210–299	(869–062–00012–0)	62.00	Jan. 1, 2007
300–399	(869–062–00013–8)	46.00	Jan. 1, 2007
400–699	(869–062–00014–6)	42.00	Jan. 1, 2007
700–899	(869–062–00015–4)	43.00	Jan. 1, 2007
900–999	(869–062–00016–2)	60.00	Jan. 1, 2007
1000–1199	(869–062–00017–1)	22.00	Jan. 1, 2007
1200–1599	(869–062–00018–9)	61.00	Jan. 1, 2007
1600–1899	(869–062–00019–7)	64.00	Jan. 1, 2007
1900–1939	(869–062–00020–1)	31.00	Jan. 1, 2007
1940–1949	(869–062–00021–9)	50.00	[5] Jan. 1, 2007
1950–1999	(869–062–00022–7)	46.00	Jan. 1, 2007
2000–End	(869–062–00023–5)	50.00	Jan. 1, 2007
8	(869–062–00024–3)	63.00	Jan. 1, 2007
9 Parts:			
1–199	(869–062–00025–1)	61.00	Jan. 1, 2007
200–End	(869–062–00026–0)	58.00	Jan. 1, 2007
10 Parts:			
1–50	(869–062–00027–8)	61.00	Jan. 1, 2007
51–199	(869–062–00028–6)	58.00	Jan. 1, 2007
200–499	(869–062–00029–4)	46.00	Jan. 1, 2007
500–End	(869–066–00030–8)	62.00	Jan. 1, 2007
11	(869–062–00031–6)	41.00	Jan. 1, 2007
12 Parts:			
1–199	(869–062–00032–4)	34.00	Jan. 1, 2007
200–219	(869–062–00033–2)	37.00	Jan. 1, 2007
220–299	(869–062–00034–1)	61.00	Jan. 1, 2007
300–499	(869–062–00035–9)	47.00	Jan. 1, 2007
500–599	(869–062–00036–7)	39.00	Jan. 1, 2007
600–899	(869–062–00037–5)	56.00	Jan. 1, 2007
900–End	(869–062–00038–3)	50.00	Jan. 1, 2007
13	(869–062–00039–1)	55.00	Jan. 1, 2007
14 Parts:			
1–59	(869–062–00040–5)	63.00	Jan. 1, 2007
60–139	(869–062–00041–3)	61.00	Jan. 1, 2007
140–199	(869–062–00042–1)	30.00	Jan. 1, 2007
200–1199	(869–062–00043–0)	50.00	Jan. 1, 2007
1200–End	(869–062–00044–8)	45.00	Jan. 1, 2007
15 Parts:			
0–299	(869–062–00045–6)	40.00	Jan. 1, 2007
300–799	(869–062–00046–4)	60.00	Jan. 1, 2007
800–End	(869–062–00047–2)	42.00	Jan. 1, 2007
16 Parts:			
0–999	(869–062–00048–1)	50.00	Jan. 1, 2007
1000–End	(869–062–00049–9)	60.00	Jan. 1, 2007
17 Parts:			
1–199	(869–062–00051–1)	50.00	Apr. 1, 2007
200–239	(869–062–00052–9)	60.00	Apr. 1, 2007
240–End	(869–062–00053–7)	62.00	Apr. 1, 2007
18 Parts:			
1–399	(869–062–00054–5)	62.00	Apr. 1, 2007
400–End	(869–062–00055–3)	26.00	Apr. 1, 2007
19 Parts:			
1–140	(869–062–00056–1)	61.00	Apr. 1, 2007
141–199	(869–062–00057–0)	58.00	Apr. 1, 2007
200–End	(869–062–00058–8)	31.00	Apr. 1, 2007
20 Parts:			
1–399	(869–062–00059–6)	50.00	Apr. 1, 2007
400–499	(869–062–00060–0)	64.00	Apr. 1, 2007
500–End	(869–062–00061–8)	63.00	Apr. 1, 2007
21 Parts:			
1–99	(869–062–00062–6)	40.00	Apr. 1, 2007
100–169	(869–062–00063–4)	49.00	Apr. 1, 2007
170–199	(869–062–00064–2)	50.00	Apr. 1, 2007
200–299	(869–062–00065–1)	17.00	Apr. 1, 2007
300–499	(869–062–00066–9)	30.00	Apr. 1, 2007
500–599	(869–062–00067–7)	47.00	Apr. 1, 2007
600–799	(869–062–00068–5)	17.00	Apr. 1, 2007
800–1299	(869–062–00069–3)	60.00	Apr. 1, 2007
1300–End	(869–062–00070–7)	25.00	Apr. 1, 2007
22 Parts:			
1–299	(869–062–00071–5)	63.00	Apr. 1, 2007
300–End	(869–062–00072–3)	45.00	Apr. 1, 2007
23	(869–062–00073–7)	45.00	Apr. 1, 2007
24 Parts:			
0–199	(869–062–00074–0)	60.00	Apr. 1, 2007
200–499	(869–062–00075–8)	50.00	Apr. 1, 2007
500–699	(869–062–00076–6)	30.00	Apr. 1, 2007
700–1699	(869–062–00077–4)	61.00	Apr. 1, 2007
1700–End	(869–062–00078–2)	30.00	Apr. 1, 2007
25	(869–062–00079–1)	64.00	Apr. 1, 2007
26 Parts:			
§§ 1.0–1–1.60	(869–062–00080–4)	49.00	Apr. 1, 2007
§§ 1.61–1.169	(869–062–00081–2)	63.00	Apr. 1, 2007
§§ 1.170–1.300	(869–062–00082–1)	60.00	Apr. 1, 2007
§§ 1.301–1.400	(869–062–00083–9)	47.00	Apr. 1, 2007
§§ 1.401–1.440	(869–062–00084–7)	56.00	Apr. 1, 2007
§§ 1.441–1.500	(869–062–00085–5)	58.00	Apr. 1, 2007
§§ 1.501–1.640	(869–062–00086–3)	49.00	Apr. 1, 2007
§§ 1.641–1.850	(869–062–00087–1)	61.00	Apr. 1, 2007
§§ 1.851–1.907	(869–062–00088–0)	61.00	Apr. 1, 2007
§§ 1.908–1.1000	(869–062–00089–8)	60.00	Apr. 1, 2007
§§ 1.1001–1.1400	(869–062–00090–1)	61.00	Apr. 1, 2007
§§ 1.1401–1.1550	(869–062–00091–0)	58.00	Apr. 1, 2007
§§ 1.1551–End	(869–062–00092–8)	50.00	Apr. 1, 2007
2–29	(869–062–00093–6)	60.00	Apr. 1, 2007
30–39	(869–062–00094–4)	41.00	Apr. 1, 2007
40–49	(869–062–00095–2)	28.00	[7] Apr. 1, 2007
50–299	(869–062–00096–1)	42.00	Apr. 1, 2007

Title	Stock Number	Price	Revision Date
300–499	(869–062–00097–9)	61.00	Apr. 1, 2007
500–599	(869–062–00098–7)	12.00	[6] Apr. 1, 2007
600–End	(869–062–00099–5)	17.00	Apr. 1, 2007
27 Parts:			
1–39	(869–062–00100–2)	64.00	Apr. 1, 2007
40–399	(869–062–00101–1)	64.00	Apr. 1, 2007
400–End	(869–062–00102–9)	18.00	Apr. 1, 2007
28 Parts:			
0–42	(869–062–00103–7)	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	(869–062–00176–2)	32.00	Oct. 1, 2007
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	(869–062–00179–7)	62.00	Oct. 1, 2007
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	(869–062–00184–3)	61.00	Oct. 1, 2007
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	(869–062–00189–4)	25.00	Oct. 1, 2007
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	(869–062–00194–1)	61.00	Oct. 1, 2007
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	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
*1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
*3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
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	(869–062–00208–4)	23.00	Oct. 1, 2007
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	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
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	(869–062–00221–1)	45.00	Oct. 1, 2007
600–659	(869–060–00221–9)	31.00	Oct. 1, 2006
*660–End	(869–062–00223–8)	31.00	Oct. 1, 2007
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.