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

WHEN: Tuesday, March 18, 2008
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. AMS–PY–07–0065]

RIN 0581–AC73

Multi Year Increase in Fees and Charges for Egg, Poultry, and Rabbit Grading and Audit Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the fees and charges for Federal voluntary egg, poultry, and rabbit grading, certification, and audit services for the next two fiscal years, FY 2008 and FY 2009. The fees and charges are being increased by 2.76% to 7.74% to cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs. AMS is required to collect fees from users of these services to cover the costs of services rendered.

EFFECTIVE DATE: March 30, 2008.

FOR FURTHER INFORMATION CONTACT: David Bowden, Jr., Chief, USDA, AMS, PY, Standards, Promotions and Technology Branch, (202) 690–3148.

SUPPLEMENTARY INFORMATION:

Background and Proposed Changes

The Agricultural Marketing Act of 1946 (AMA), as amended, (7 U.S.C. 1621–1627), gives AMS the authority to provide services so that agricultural products may be marketed to their best advantage, that global marketing and trade may be facilitated, and that consumers may be able to ascertain characteristics involved in the production and processing of products and obtain the quality of product they desire. The AMA also provides for the collection of fees from users of these services that are reasonable and cover the cost of providing services. Voluntary grading and certification of eggs, poultry, and rabbits and verification and conformance audits, fall within this authorization.

A recent review determined that the existing fee schedule, effective April 1, 2007, will not generate sufficient revenue to cover program costs while maintaining an adequate trust fund reserve balance in FY 2008 and FY 2009. Revenue, investment income and other adjustments in FY 2006 were $36 million while expenses were $35 million, resulting in a trust fund reserve balance increase from $12.3 million to $13.3 million.[1]

FY 2007 revenue, investment income and other adjustments are currently projected at $35.9 million and expenses in FY 2007 are projected at $35.8 million. This will result in a trust fund reserve balance of $13.4 million.

Without a fee increase, FY 2008 revenue is projected to be $35 million. Expenses are projected to be $37.4 million, which would leave a reserve of $11 million. With a fee increase, FY 2008 revenue is projected at $37.5 million. The fee increase will result in a trust fund reserve balance of $13.5 million.

Without a fee increase, FY 2009 revenue is projected at $34.9 million. Expenses are projected at $38.2 million, which would leave a reserve of $7.7 million. With a fee increase in FY 2009, revenue is projected at $38.8 million. The fee increase will result in a trust fund reserve balance of $14 million.

Employee salaries and benefits account for approximately 85 percent of the total operating budget. The last general and locality salary increase for Federal employees became effective on January 1, 2007, and it materially affected program costs. Projected cost estimates for that increase were based on a salary increase of 1.7 percent; however, the increase was actually 1.81 to 3.02 percent, depending on locality. The average annual increase in salary over the past five years has been 3.71 percent and was used for the projected salary increase for January 2008 and January 2009. Also, from October 2007 through September 2009, salaries and fringe benefits of federally-licensed State employees are estimated to increase by about 6.0 percent.

The hourly rate for resident and non-resident service covers graders' salaries and benefits. The current hourly rates of $39.04, $69.68, and $80.12 for the resident and fee service cover graders' salaries and benefits, plus the cost of travel and supervision. The minimum monthly administrative volume charge for resident poultry, shell egg, and rabbit grading remains at $275, because the fee analysis determined that raising the minimum monthly administrative charge would not generate additional reserve.

For FY 2008 the resident fee rate will be $40.88 for regular hours and $64.44 for holiday hours, an increase of approximately 5 percent from the previous year. Beginning in January 2009, the resident fees rates will be $42.68 for regular hours and $67.28 for holiday hours, an increase of approximately 4 percent from the previous year.

For FY 2008 the non-resident fee rates will be $74.08 for regular hours and $86.68 for weekend and holiday hours, an increase of approximately 7 percent from the previous year. Beginning in January 2009, the non-resident fee rates will be $77.28 for regular hours and $93.24 for weekend and holiday hours, an increase of approximately 6 percent from the previous year.

Current rates for auditing services are $82.16 and $102.84. In FY 2008 they will be $87.56 for regular hours and $112.00 for weekend and holiday hours, an increase of approximately 8 percent from the previous year. Beginning in January 2009, the audit rates will be $89.20 for regular hours and $116.08 for weekend and holiday hours, an increase of approximately 3 percent.

The inauguration charge of $310, when an application for service has been received, has been eliminated. By restructuring the inauguration charge, expenses incurred for plant surveys and billed to applicants will reflect a more accurate accounting for the services rendered. Since a plant survey still is required, the fee for the survey will be borne by the applicant at rates set forth for shell eggs in § 56.46 (a)-(c) and for poultry and rabbits in § 70.71 (a)-(c), plus any travel and additional expenses.

[1] With the increase, the reserve would be $14 million. However a six month reserve is needed for all program contingencies, including shutdown.

The following table compares current and new fees. The fee rate will be increased by approximately 7.0 percent. The hourly rate for resident and nonresident service covers graders' salaries and benefits.

Service	Current	2008	2009
Resident Service (egg, poultry, and rabbit grading)			
Inauguration of service	310	0	0
Hourly charges:			
Regular hours	39.04	40.88	42.68
Holiday hours	61.44	64.44	67.28
Administrative charges—Poultry grading	.00043	.00045	.00047
Per pound of poultry	275	275	275
Minimum per month	3,075	3,150	3,225
Maximum per month	.....	.....	.....
Administrative charges—Shell egg grading	.053	.055	.058
Per 30-dozen case of shell eggs	275	275	275
Minimum per month	3,075	3,150	3,225
Maximum per month	.....	.....	.....
Administrative charges—Rabbit grading:			
Based on 25% of grader's salary, minimum per month	275	275	275
Non-resident Service (egg, poultry, and rabbit grading)			
Hourly charges:			
Regular hours	39.04	40.88	42.68
Administrative charges:			
Based on 25% of grader's salary, minimum per month	275	275	275
Nonresident Fee and Appeal Service (egg, poultry, and rabbit grading)			
Hourly charges:			
Regular hours	69.68	74.08	77.28
Weekend and holiday hours	80.12	86.68	93.24
Audit Fee (Plant Systems, Animal Welfare, QSVP)			
Hourly charges:			
Regular hours	82.16	87.56	89.20
Weekend and holiday hours	102.84	112.00	116.08

Comments

Based on the analysis of costs to provide these services, a proposed rule to increase fees for these services was published in the **Federal Register** (72 FR 62591) on November 6, 2007. Comments on the proposed rule were solicited from interested parties until December 6, 2007. No comments were received.

Executive Order 12866

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

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601–674), AMS has considered the economic impact of this action on small entities. It is determined that its provisions will not have a significant economic impact on a substantial number of small entities.

There are about 390 users of Poultry Programs' services. These official plants can pack eggs, poultry, and rabbits in packages bearing the USDA grade shield when AMS graders are present to certify that the products meet the grade requirements as labeled. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). These entities are under no obligation to use program services as authorized under the Agricultural Marketing Act of 1946.

AMS regularly reviews its user fee financed programs to determine if fees are adequate and if costs are reasonable. A recent review determined that the existing fee schedule, effective April 1, 2007, will not generate sufficient revenue to cover program costs while maintaining an adequate reserve balance in FY 2008 and FY 2009.

Expenses in FY 2008 are projected at $37.4 million. Without a fee increase, FY 2008 revenue is projected at $35 million. With a fee increase, FY 2008 revenues are projected at $37.5 million.

Expenses in FY 2009 are projected at $38.2 million. Without a fee increase, FY 2009 revenues are projected at $34.9 million. With a fee increase, FY 2009 revenues are projected at $38.8 million.

This action will raise the fees charged to users of grading and auditing services. AMS estimates that, overall, this rule will yield about $2.4 million during FY 2008 and an additional $1.3 million for FY 2009. The hourly rate for resident and nonresident service will increase by approximately 4.71 percent in FY 2008 and 4.4 percent in FY 2009. The fee rate will increase by approximately 7 percent in FY 2008 and approximately 6 percent in FY 2009. The audit fee will increase by approximately 8 percent in FY 2008 and approximately 3 percent in FY 2009. The impact of these rate changes in a poultry plant will range from about $0.000078 to $0.000952 per pound of poultry handled in FY 2008 and $0.000085 to $0.001068 in FY 2009. In a shell egg plant, the range will be $0.000273 to $0.003499 per dozen eggs handled in FY 2008 and $0.000410 to $0.004870 per dozen eggs handled in FY 2009.

Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to

have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction

The information collection requirements that appear in the sections to be amended by this action have been previously approved by OMB and assigned OMB Control Numbers under the Paperwork Reduction Act (44 U.S.C. Chapter 35) as follows: § 56.52(a)(4)—No. 0581–0128; and § 70.77(a)(4)—No. 0581–0127.

Pursuant to 5 U.S.C. 533, it is found and determined that good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register**. The revised fees need to be implemented on an expedited basis in order to avoid further financial losses in the grading program. The effective date of the fee increase is March 30, 2008.

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

■ For reasons set forth in the preamble, Title 7, Code of Federal Regulations, parts 56 and 70 is amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 56.46 [Amended]

■ 2. Section 56.46 is amended by:
■ A. Removing in paragraph (b), ''$69.68'' and adding ''$74.08, beginning March 30, 2008, and $77.28 on or after January 25, 2009,'' in its place.
■ B. Removing in paragraph (c), ''$80.12 per hour'' and adding ''$86.68 per hour, beginning March 30, 2008, and $93.24 per hour on or after January 25, 2009,'' in its place.
■ C. Removing in paragraph (d), ''$82.16'' and adding ''$87.56 beginning March 30, 2008, and $89.20 on or after January 25, 2009,'' in its place.
■ D. Removing in paragraph (e), ''$102.84 per hour'' and adding ''$112.00 per hour beginning March 30, 2008, and $116.08 per hour on or after January 25, 2009,'' in its place.
■ 3. Section 56.52 is amended by:
■ A. Removing the first sentence of paragraph (a)(1), and adding three sentences to read as set forth below; and
■ B. Removing in paragraph (a)(4), ''$0.053'' and adding ''$0.055 beginning March 30, 2008, and $0.058 on or after January 25, 2009,'' in its place, and removing ''$3,075'' and adding ''$3,150 beginning March 30, 2008, and $3,225 on or after January 25, 2009,'' in its place.

§ 56.52 Charges for continuous grading performed on a resident basis.

* * * * *

(a) * * *

(1) When a signed application for service has been received, the State supervisor or the supervisor's assistant shall complete a plant survey pursuant to § 56.30. The costs for completing the plant survey shall be borne by the applicant on a fee basis at rates set forth in § 56.46 (a) through(c), plus any travel and additional expenses. No charges will be assessed when the application is required because of a change in name or ownership. * * *

* * * * *

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

■ 4. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 70.71 [Amended]

■ 5. Section 70.71 is amended by:
■ A. Removing in paragraph (b) ''$69.68'' and adding ''$74.08 beginning March 30, 2008, and $77.28 on or after January 25, 2009,'' in its place.
■ B. Removing in paragraph (c) ''$80.12 per hour'' and adding ''$86.68 per hour beginning March 30, 2008, and $93.24 per hour on or after January 25, 2009,'' in its place.
■ C. Removing in paragraph (d), ''$82.16'' and adding ''$87.56 beginning March 30, 2008, and $89.20 on or after January 25, 2009,'' in its place.
■ D. Removing in paragraph (e), ''$102.84 per hour'' and adding ''$112.00 per hour beginning March 30, 2008, and $116.08 per hour on or after January 25, 2009,'' in its place.
■ 6. Section 70.77 is amended by:
■ A. Removing the first sentence of paragraph (a)(1), and adding three sentences to read as set forth below; and
■ B. Removing in paragraph (a)(4), ''$0.00043'' and adding ''$0.00045 beginning March 30, 2008, and $0.00047 on or after January 25, 2009,'' in its place, and removing ''$3,075'' and adding ''$3,150 beginning March 30, 2008, and $3,225 on or after January 25, 2009,'' in its place.

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(1) When a signed application for service has been received, the State supervisor or the supervisor's assistant shall complete a plant survey pursuant to § 70.34. The costs for completing the plant survey shall be borne by the applicant on a fee basis at rates set forth in § 70.71 (a) through (c), plus any travel and additional expenses. No charges will be assessed when the application is required because of a change in name or ownership. * * *

* * * * *

Dated: February 28, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 08–928 Filed 2–28–08; 11:26 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 786

RIN 0560–AH74

Dairy Disaster Assistance Payment Program III

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a new program, the Dairy Disaster Assistance Payment Program III, as authorized by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. The program will provide $16 million in assistance for producers in counties designated as a major disaster or emergency area by the President, or those declared a natural disaster area by the Secretary of Agriculture. Counties declared disasters by the President may be eligible, even though agricultural loss was not covered by the declaration, if there has been a Farm Service Agency Administrator's Physical Loss Notice covering such losses. The natural disaster declarations by the Secretary or the President must have been issued between January 1, 2005 and December 31, 2007, that is, after January 1, 2005, and before December 31, 2007. Counties

contiguous to such counties will also be eligible. This program is designed to provide financial assistance to producers who suffered dairy production losses due to natural disasters in the eligible counties.

DATES: This rule is effective on March 4, 2008.

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, *telephone:* (202) 720–1919; *e-mail: Danielle.Cooke@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

This rule establishes regulations based on the proposed rule published in the **Federal Register** on November 26, 2007 (72 FR 65889–65897). The 30-day comment period for the proposed rule closed on December 26, 2007; 16 comments were submitted. The issues raised in the comments and the resulting changes to the rule are discussed later in this final rule.

The proposed rule provided that the DDAP–III program would be based on disaster related dairy production losses suffered during the period of January 2, 2005, and February 27, 2007, in counties declared or designated a natural disaster by the President or Secretary of Agriculture. For timely Presidential declarations that do not cover agricultural loss, the subject counties may still be covered if the county was the subject of a Farm Service Agency (FSA) Administrator's Loss Notice. Counties contiguous to such declared counties are also eligible. The program will end at the conclusion of the application period and disbursement of allotted funds. The DDAP–III program will operate under regulations codified in 7 CFR part 786.

The proposed rule specified that dairy producers would disclose the number of cows in the operation's dairy herd for each month of the calendar year in which a disaster declaration was issued to determine the average number of cows in the dairy herd for the operation per applicable year and calculate the qualifying production loss for the operation. The proposed rule also provided that spoiled or dumped milk would be counted as production for the relevant claim period. In addition, the proposed rule provided that qualifying production losses would be calculated from a set base amount determined from data obtained from the National Agricultural Statistics Service (NASS). The proposed rule provided that if the limited program funds were not sufficient to pay all claims for lost production, then priority would be given in making payments to those persons whose losses for each applicable disaster year were greater than 20 percent. The proposed rule also specified that the prices at which payments would be made would be amounts set out in the rule which were derived from a series of reported ''mailbox'' prices.

Comments and Changes to the Final Rule

During the 30-day comment period the Agency received public comments from a dairy cooperative, five associations, a Farm Bureau, and eight private citizens. In general, the comments supported the proposed rule, however, each of the comments raised one or more issues addressing a specific aspect of implementing DDAP–III and several comments raised the same issues. As explained below, minor changes to the regulations based on the comments will slightly modify the provisions specified in the proposed rule.

Two comments opposed the program, one indicated that assistance should only be provided to small dairy operations and the other objected to anyone other than the President making disaster declarations. One of those comments also indicated that assistance provided by this program is a misuse of taxpayer dollars and that it was misleading for Congress to insert a statute for agriculture in a non-related military spending bill. No changes have been made in the rule based on these comments. The Agency is charged with implementing the statutory provisions and has done so in this final rule.

One comment requested clarification regarding spoiled or dumped milk being counted as production during the relevant claim period. Specifically, to ensure that milk production that spoiled or was dumped for a disaster related reason would be included in the qualifying production losses for the dairy operation. The provision in the rule that requires spoiled or dumped milk being counted as production is intended to account for milk that spoiled or was dumped due to non-disaster related reasons and must be counted as production. The Agency clarified this point in the rule by revising section 786.106, paragraphs (e) and (h), which were proposed as paragraphs (c) and (f), respectively.

Comments were received on the method of payment at two levels in the event of inadequate funds for all eligible losses and the appropriate loss level percentage. Two respondents opposed the use of the 20 percent threshold because its use over a full calendar year for an initial round of disaster benefits may not recognize the economic reality of significantly higher input costs on dairy farms and the devastating effect of short term disasters. With funding limitations, the proposed threshold percentage provides fair compensation and is consistent with other disaster programs administered by the Agency. Therefore, no change was made in response to these comments.

One comment suggested making dairy operations outside of eligible disaster counties eligible when milk was dumped as a result of the market outlet being located in a disaster affected county. The statutory provisions did not provide for counties outside of disaster declared counties to be eligible. Therefore, no change was made in response to this comment.

One comment requested clarification of the phrase ''legal resident alien'' and believed that holders of E12 Visas should be permitted to participate in the program. Provisions for foreign persons used for FSA programs are provided in 7 CFR part 1400, subpart F, and apply to this program. A definition for a lawful alien is also provided in 1400.3. Therefore, no change was made in response to this comment.

Most comments received disagreed with how the base production for the dairy operation was determined. Twelve respondents opposed the use of NASS State averages to determine base production because of the great disparity between operations with minor breeds or poor herd management practices that produce significantly less than the NASS average and those dairy operations with higher inputs that are more efficient and produce well above the NASS average. Additionally, one comment received opposed the use of the calendar year of the disaster to determine base production and believed a period of weeks, months or the year prior to the disaster would be more representative of base period production for comparison. Further, the comment disagreed with the use of cow averages during the year of the disaster to determine base production because cow losses would factor into a decreased base production for the dairy operation. These comments supported an alternative method of determining base production for the dairy operation that was not based on the year of the disaster and did not include the use of NASS State averages based on cow averages during the applicable disaster year.

After careful consideration of the recommendations proposed in the comments, the Agency will change the determination of base annual production for the dairy operation to use the average of the total

commercially marketed production during both calendar years 2003 and 2004 prior to the eligible period, divided by the average number of cows in the dairy herd during both calendar years 2003 and 2004 prior to the eligible period, to establish the average annual production per cow. To calculate the base annual production for the dairy operation, the average annual production per cow determined from the base year information obtained from the producer, will be multiplied by the average number of cows (not including cow losses resulting from the disaster occurrence) in the dairy herd during the applicable year of the disaster. Dairy operations without the required information from the 2003 and 2004 base years will use an alternative method to estimate the average annual production per cow that will be determined by the FSA Administrator. For example, for new dairies not in operation during 2003 and 2004, FSA may obtain information from three similar farms to estimate the base annual production for the operation. These changes were made throughout the regulations with revised definitions, sections 786.104 through 786.106.

Miscellaneous Changes

Payment rates for the four States of Colorado, Hawaii, Oklahoma, and Wyoming were inadvertently left out of the table in section 786.107 in the proposed rule and are incorporated in this final rule.

The Consolidated Appropriations Act of 2008 (Pub. L. 110–161), extended the eligible period for the program from February 27, 2007 to December 30, 2007. Changes are incorporated throughout to modify the date to reflect the extension.

Executive Order 12866

This rule has been determined to be not significant under Executive Order 12866 and was reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment of this rule was completed and is available from the contact information above.

Summary of Economic Impacts

Program payments will provide eligible producers funds to help pay operating expenses and meet other financial obligations. Program payments are expected to total and increase both Federal outlays and aggregate farm revenue by $16 million. This assistance will help dairy producers affected by natural disasters to recover some lost income and additional repair expenses to aid in continuing their agricultural production businesses.

The States with the highest percentages of dairies expected to make claims are: Idaho (33 percent), California (16 percent), New Mexico (13 percent), Indiana and Michigan (7–8 percent), Washington and Arizona (5 percent), and Wisconsin (3 percent). Expected claims totaled 3.1 million hundred weight (cwt).

If total eligible losses exceed available funding, losses above 20 percent will be paid at the maximum payment rates. The average payment rate for losses below 20 percent will be determined by dividing remaining funding by the total milk pounds below 20 percent eligible for payment. The resulting payment rate is projected to be $5.15 per cwt, substantially below average mailbox prices.[1] The average mailbox price for all Federal Orders in the United States was $12.87 in 2006 and $11.28 in California, which is outside the Federal Order system. The lowest mailbox price in the Federal Order system in 2006 was $11.13 in New Mexico.

Producers who can demonstrate a loss exceeding 20 percent of their production will receive compensation equal to the average mailbox price prevailing in their region during the period of the disaster. To the extent that payments equal to the mailbox price are made to some producers, the otherwise-average payment rate of $5.15 will be reduced. In theory, it is possible that enough producers could claim a 20-percent-or-greater loss and receive payments equal to the mailbox price, that payments to the remaining producers with lower losses could be considerably less than $5.15. However, FSA does not have sufficient data to estimate how many producers might have losses exceeding 20 percent of their production, or how much milk such losses might represent.

Payments are expected to increase producer income and defray repair and cattle replacement costs. Outlays will be monitored to ensure that they do not exceed the actual loss.

The $16 million is a small share of federal farm assistance. For example, Commodity Credit Corporation (CCC) made $15.3 billion in direct cash payments to farmers and ranchers in fiscal 2005, excluding all payments made for disasters, with the largest category of payments being $8 billion paid under the Direct and Counter Cyclical Program. CCC direct cash payments for fiscal 2005 through estimated fiscal 2007 total $43.7 billion, averaging $14.6 billion, annually.

[1] The mailbox price is the net price producers receive for their milk, after all marketing costs, discounts, premiums are accounted for. The Agricultural Marketing Service collects and publishes monthly mailbox prices.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because FSA is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject of this rule.

Environmental Assessment

FSA has determined that this rule does not constitute a major State or Federal action that would significantly affect the human or natural environment consistent with the National Environmental Policy Act 40 CFR part 1502.4, Major Federal actions requiring the preparation of Environmental Impact Statements, and 7 CFR part 799: Environmental Quality and Related Environmental Concerns—Compliance with NEPA implementing the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508. Therefore no environmental assessment or environmental impact statement will be prepared.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12998. This rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Although we published a proposed rule, Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because FSA is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

The Information Collection Packages for the amendments to 7 CFR 786 contained in this final rule have been submitted to the Office of Management and Budget (OMB) for approval as a revision to OMB Control Number 0560–

0252. A proposed rule containing an estimate of the burden impact of the rule was published in the **Federal Register** on November 26, 2007 (72 FR 65889–65897) with estimates of the information collection burden required to implement this program and a request for comments on those requirements as required by 5 CFR section 1320.8(d)(1). No comments concerning the burden estimate were received.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The forms, regulations, and other information collection activities required to be utilized by a person subject to this rule are available at *http://www.fsa.usda.gov.* Applications may be submitted at the FSA county offices.

List of Subjects in 7 CFR Part 786

Dairy products, Disaster assistance, Fraud, Penalties, Price support programs, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 7 CFR part 786 is added to read as follows:

PART 786—DAIRY DISASTER ASSISTANCE PAYMENT PROGRAM (DDAP–III)

Sec.

Authority: Sec. 9007, Pub. L. 110–28, 121 Stat. 112; and Sec. 743, Pub. L. 110–161.

PART 786—DAIRY DISASTER ASSISTANCE PAYMENT PROGRAM III (DDAP–III)

§ 786.100 Applicability.

(a) Subject to the availability of funds, this part specifies the terms and conditions applicable to the Dairy Disaster Assistance Payment Program (DDAP–III) authorized by section 9007 of Public Law 110–28 (extended by Pub. L. 110–161). Benefits are available to eligible United States producers who have suffered dairy production losses in eligible counties as a result of a natural disaster declared during the period between January 1, 2005, and December 31, 2007, (that is, after January 1, 2005, and before December 31, 2007).

(b) To be eligible for this program, a producer must have been a milk producer anytime during the period of January 2, 2005, through December 30, 2007, in a county declared a natural disaster by the Secretary of Agriculture, declared a major disaster or emergency designated by the President of the United States. For a county for which there was a timely Presidential declaration, but the declaration did not cover the loss, the county may still be eligible if the county is one for which an appropriate determination of a Farm Service Agency (FSA) Administrator's Physical Loss Notice applies. Counties contiguous to a county that is directly eligible by way of a natural disaster declaration are also eligible. Only losses occurring in eligible counties are eligible for payment in this program.

(c) Subject to the availability of funds, FSA will provide benefits to eligible dairy producers. Additional terms and conditions may be specified in the payment application that must be completed and submitted by producers to receive a disaster assistance payment for dairy production losses.

(d) To be eligible for payments, producers must meet the provisions of, and their losses must meet the conditions of, this part and any other conditions imposed by FSA.

§ 786.101 Administration.

(a) DDAP–III will be administered under the general supervision of the Administrator, FSA, or a designee, and be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee will take any action required by the regulations of this part that has not been taken by the county committee. The State committee will also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this part; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision of delegation in this part to a State or county committee will preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines in cases where lateness or failure to meet such requirements do not adversely affect the operation of the DDAP–III and does not violate statutory limitations of the program.

(f) Data furnished by the applicants is used to determine eligibility for program benefits. Although participation in DDAP–III is voluntary, program benefits will not be provided unless the producer furnishes all requested data.

§ 786.102 Definitions.

The definitions in 7 CFR part 718 apply to this part except to the extent they are inconsistent with the provisions of this part. In addition, for the purpose of this part, the following definitions apply.

Administrator means the FSA Administrator, or a designee.

Application means DDAP–III application.

Application period means the time period established by the Deputy Administrator for producers to apply for program benefits.

Base annual production means the pounds of production determined by multiplying the average annual production per cow calculated from base period information times the average number of cows in the dairy herd during each applicable disaster year.

County committee means the FSA county committee.

County office means the FSA office responsible for administering FSA programs for farms located in a specific area in a State.

Dairy operation means any person or group of persons who, as a single unit, as determined by FSA, produces and markets milk commercially from cows and whose production facilities are located in the United States.

Department or USDA means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), FSA, or a designee.

Disaster claim period means the calendar year(s) applicable to the disaster declaration during the eligible period in which the production losses occurred.

Disaster county means a county included in the geographic area covered by a natural disaster declaration, and any county contiguous to a county that qualifies by a natural disaster declaration.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Hundredweight or cwt. means 100 pounds.

Milk handler or cooperative means the marketing agency to, or through, which the producer commercially markets whole milk.

Milk marketings means a marketing of milk for which there is a verifiable sale or delivery record of milk marketed for commercial use.

Natural disaster declaration means a natural disaster declaration issued by the Secretary of Agriculture after January 1, 2005, but before December 31, 2007, under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)), a major disaster or emergency designation by the President of the United States in that period under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or a determination of a Farm Service Agency Administrator's Physical Loss Notice for a county covered in an otherwise eligible Presidential declaration.

Payment pounds means the pounds of milk production from a dairy operation for which the dairy producer is eligible to be paid under this part.

Producer means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or a legal resident alien in, the United States, and who directly or indirectly, as determined by the Secretary, have a share entitlement or ownership interest in a commercial dairy's milk production and who share in the risk of producing milk, and make contributions (including land, labor, management, equipment, or capital) to the dairy farming operation of the individual or entity.

Reliable production evidence means records provided by the producer subject to a determination of acceptability by the county committee that are used to substantiate the amount of production reported when verifiable records are not available; the records may include copies of receipts, ledgers of income, income statements of deposit slips, register tapes, and records to verify production costs, contemporaneous measurements, and contemporaneous diaries.

Verifiable production records means evidence that is used to substantiate the amount of production marketed, including any dumped production, and that can be verified by FSA through an independent source.

§ 786.103 Time and method of application.

(a) Dairy producers may obtain an application, in person, by mail, by telephone, or by facsimile from any FSA county office. In addition, applicants may download a copy of the application at *http://www.sc.egov.usda.gov.*

(b) A request for benefits under this part must be submitted on a completed DDAP–III application. Applications and any other supporting documentation must be submitted to the FSA county office serving the county where the dairy operation is located, but, in any case, must be received by the FSA county office by the close of business on the date established by the Deputy Administrator. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the dairy producer will not be eligible for benefits under this program.

(c) All persons who share in the milk production of the dairy operation and risk of the dairy operation's total production must certify to the information on the application before the application will be considered complete.

(d) Each dairy producer requesting benefits under this part must certify to the accuracy and truthfulness of the information provided in their application and any supporting documentation. Any information entered on the application will be considered information from the applicant regardless of who entered the information on the application. All information provided is subject to verification by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided may result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government may be punishable by imprisonment, fines, and other penalties or sanctions.

§ 786.104 Eligibility.

(a) Producers in the United States will be eligible to receive dairy disaster benefits under this part only if they have suffered dairy production losses, previously uncompensated by disaster payments including any previous dairy disaster payment program, during the claim period applicable to a natural disaster declaration in a disaster county. To be eligible to receive payments under this part, producers in a dairy operation must:

(1) Have produced and commercially marketed milk in the United States and commercially marketed the milk produced anytime during the period of January 2, 2005 through December 30, 2007;

(2) Be a producer on a dairy farm operation physically located in an eligible county where dairy production losses were incurred as a result of a disaster for which an applicable natural disaster declaration was issued between January 1, 2005 and December 31, 2007, and limit their claims to losses that occurred in those counties, specific to conditions resulting from the declared disaster as described in the natural disaster declaration;

(3) Provide adequate proof, to the satisfaction of the FSA county committee, of the average number of cows in the dairy herd and annual milk production commercially marketed by all persons in the eligible dairy operation during the years of the base period (2003 and 2004 calendar years) and applicable disaster year that corresponds with the issuance date of the applicable natural disaster declaration, or other period as determined by FSA, to determine the total pounds of eligible losses that will be used for payment; and

(4) Apply for payments during the application period established by the Deputy Administrator.

(b) Payments may be made for losses suffered by an otherwise eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

(c) Producers associated with a dairy operation must submit a timely application and satisfy the terms and conditions of this part, instructions issued by FSA, and instructions contained in the application to be eligible for benefits under this part.

(d) As a condition to receive benefits under this part, a producer must have

been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of 7 CFR part 12 for the calendar year applicable to the natural disaster declaration and loss claim period, and must not otherwise be barred from receiving benefits under 7 CFR part 12 or any other law or regulation.

(e) Payments are limited to losses in eligible counties, in eligible disaster years.

(f) All payments under this part are subject to the availability of funds.

(g) Eligible losses are determined from the applicable base annual production, as defined in § 786.102, that corresponds to the natural disaster declaration and must have occurred during that same period as follows:

(1) For disaster declarations for disasters during a calendar year (2005, 2006, or 2007), the disaster claim period is the full calendar year and

(2) For disaster declarations issued during one calendar year that ends in another calendar year, the producer will be eligible for both disaster years.

(h) Deductions in eligibility will be made for any disaster payments previously received for the loss including any made under a previous dairy disaster assistance payment program for 2005.

§ 786.105 Proof of production.

(a) Evidence of production is required to establish the commercial marketing and production history of the dairy operation so that dairy production losses can be computed in accordance with § 786.106.

(b) A dairy producer must, based on the instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation's commercial production, including any dairy herd inventory records available for the operation, for the years of the base period (2003 and 2004 calendar years) and disaster claim period that corresponds with the issuance date of the applicable natural disaster declaration.

(1) A producer must certify and provide such proof as requested that losses for which compensation is claimed were related to the disaster declaration issued and occurred in an eligible county during the eligible claim period.

(2) A producer must certify to the average number of cows in the dairy herd during the base period and applicable disaster claim period when there is insufficient documentation available for verification.

(3) Additional supporting documentation may be requested by FSA as necessary to verify production losses to the satisfaction of FSA.

(c) Adequate proof of production history of the dairy operation under paragraph (b) of this section must be based on milk marketing statements obtained from the dairy operation's milk handler or marketing cooperative. Supporting documents may include, but are not limited to: Tank records, milk handler records, daily milk marketings, copies of any payments received from other sources for production losses, or any other documents available to confirm or adjust the production history losses incurred by the dairy operation. All information provided is subject to verification, spot check, and audit by FSA.

(d) As specified in § 786.106, loss calculations will be based on comparing the expected base annual production consistent with this part and the actual production during the applicable disaster claim year. Such calculations are subject to adjustments as may be appropriate such as a correction for losses not due to the disaster. If adequate proof of normally marketed production and any other production for relevant periods is not presented to the satisfaction of FSA, the request for benefits will be rejected. Special adjustments for new producers may be made as determined necessary by the Administrator.

§ 786.106 Determination of losses incurred.

(a) Eligible payable losses are calculated on a dairy operation by dairy operation basis and are limited to those occurring during the applicable disaster claim period, as provided by § 786.104(g), that corresponds with the applicable natural disaster declaration. Specifically, dairy production losses incurred by producers under this part are determined on the established history of the dairy operation's average number of cows in the dairy herd and actual commercial production marketed during the base period and applicable disaster claim period that corresponds with the applicable natural disaster declaration, as provided by the dairy operation consistent with § 786.105. Except as otherwise provided in this part, the base annual production, as defined in § 786.102 and established in § 786.104(g) is determined for each applicable disaster year based on the average annual production per cow determined according to the following:

(1) The average of annual marketed production during the base period calendar years of 2003 and 2004, divided by;

(2) The average number of cows in the dairy operation's herd during the base period calendar years of 2003 and 2004.

(b) If relevant information to calculate the average annual production per cow for one or both of the base period calendar years of 2003 and 2004, is not available, an alternative method of determining the average annual production per cow may be established by the FSA Administrator. For example, for new dairies not in operation during 2003 and 2004, information from three similar farms may be obtained by FSA to estimate base annual production.

(c) The average annual production per cow, as determined according to paragraphs (a)(1) and (a)(2) of this section, is multiplied by the average number of cows in the dairy operation's herd during the applicable disaster year (excluding cow losses resulting from the disaster occurrence), to determine base annual production for the dairy operation for each applicable disaster claim period year.

(d) The eligible dairy production losses for a dairy operation for each of the authorized disaster claim period years will be:

(1) The relevant period's base annual production for the dairy operation calculated under paragraph (c) of this section less,

(2) For each such disaster claim period for each dairy operation the actual commercially-marketed production relevant to that period.

(e) Spoiled or dumped milk, disposed of for reasons unrelated to the disaster occurrence, must be counted as production for the relevant disaster claim period. Actual production losses may be adjusted to the extent the reduction in production is not certified by the producer to be the result of the disaster identified in the natural disaster declaration or is determined by FSA not to be related to the natural disaster identified in the natural disaster declaration. FSA county committees will determine production losses that are not caused by the disaster associated with the natural disaster declaration. The calculated production loss determined in § 786.106(d) will be adjusted to account for pounds of production losses determined by the FSA county committee to not have been associated with the declared natural disaster for an eligible disaster county. The FSA county committee may convert cow numbers to actual pounds of production used in the adjustment, by multiplying the average annual production per cow determined from base period information, by the applicable number of cows determined to be ineligible to generate claims for

benefits. Other appropriate adjustments will be made on such basis as the Deputy Administrator finds to be consistent with the objectives of the program.

(f) Actual production, as adjusted, that exceeds the base annual production will mean that the dairy operation incurred no eligible production losses for the corresponding claim period as a result of the natural disaster.

(g) Eligible production losses as otherwise determined under paragraphs (a) through (f) of this section for each authorized year of the program are added together to determine total eligible losses incurred by the dairy operation under DDAP–III subject to all other eligibility requirements as may be included in this part or elsewhere, including the deduction for previous payments including those made under a previous DDAP program.

(h) Payment on eligible dairy operation losses will be calculated using whole pounds of milk. No double counting is permitted, and only one payment will be made for each pound of milk calculated as an eligible loss after the distribution of the dairy operation's eligible production loss among the producers of the dairy operation according to § 786.107(b). Payments under this part will not be affected by any payments for dumped or spoiled milk that the dairy operation may have received from its milk handler, marketing cooperative, or any other private party; however, produced milk that was dumped or spoiled for reasons unrelated to the disaster occurrence will still count as production.

§ 786.107 Rate of payment and limitations on funding.

(a) Subject to the availability of funds, the payment rate for eligible production losses determined according to § 786.106 is, depending on the State, the annual average Mailbox milk price for the Marketing Order, applicable to the State where the eligible disaster county is located, as reported by the Agricultural Marketing Service during the relevant period. States not regulated under a Marketing Order will be assigned a payment rate based on contiguous or nearby State's Mailbox milk price. Maximum per pound payment rates for eligible losses for dairy operations located in specific states during the relevant period are as follows:

State	Mailbox price 2005	Mailbox price 2006	Mailbox price 2007 *
Alabama	0.1596	0.1443	
Alaska	0.2040	0.2010	
Arizona	0.1388	0.1128	
Arkansas	0.1596	0.1443	
California	0.1388	0.1128	
Colorado	0.1403	0.1214	
Connecticut	0.1539	0.1344	
Delaware	0.1539	0.1344	
Florida	0.1758	0.1603	
Georgia	0.1596	0.1443	
Hawaii	0.2700	0.2600	
Idaho	0.1402	0.1215	
Illinois	0.1514	0.1283	
Indiana	0.1503	0.1294	
Iowa	0.1507	0.1285	
Kansas	0.1403	0.1214	
Kentucky	0.1527	0.1349	
Louisiana	0.1596	0.1443	
Maine	0.1539	0.1344	
Maryland	0.1539	0.1344	
Massachusetts	0.1539	0.1344	
Michigan	0.1478	0.1264	
Minnesota	0.1512	0.1277	
Mississippi	0.1596	0.1443	
Missouri (Northern)	0.1403	0.1214	
Missouri (Southern)	0.1467	0.1254	
Montana	0.1512	0.1277	
Nebraska	0.1403	0.1214	
Nevada	0.1388	0.1128	
New Hampshire	0.1539	0.1344	
New Jersey	0.1539	0.1344	
New Mexico	0.1323	0.1108	
New York	0.1539	0.1303	
North Carolina	0.1527	0.1349	
North Dakota	0.1512	0.1277	
Ohio	0.1506	0.1302	
Oklahoma	0.1596	0.1443	
Oregon	0.1402	0.1215	
Pennsylvania (Eastern)	0.1539	0.1340	
Pennsylvania (Western)	0.1539	0.1302	
Puerto Rico	0.2550	0.2570	
Rhode Island	0.1539	0.1344	
South Carolina	0.1527	0.1349	
South Dakota	0.1512	0.1277	
Tennessee	0.1527	0.1349	
Texas	0.1405	0.1194	
Vermont	0.1539	0.1344	
Virginia	0.1527	0.1349	

State	Mailbox price 2005	Mailbox price 2006	Mailbox price 2007 *
Washington	0.1402	0.1215	.....
West Virginia	0.1506	0.1302	.....
Wisconsin	0.1535	0.1305	.....
Wyoming	0.1403	0.1214	.....

Note: Calculations are rounded to 7 decimal places.

* Payment rates for 2007 are currently unavailable, but will be based on the annual average Mailbox milk price for the Marketing Order, applicable to the State where the eligible disaster county is located, as reported by the Agricultural Marketing Service, consistent with payment rates provided for 2005 and 2006.

(b) Subject to the availability of funds, each eligible dairy operation's payment is calculated by multiplying the applicable payment rate under paragraph (a) of this section by the operation's total eligible losses as adjusted pursuant to this part. Where there are multiple producers in the dairy operation, individual producers' payments are disbursed according to each producer's share of the dairy operation's production as specified in the application.

(c) If the total value of losses claimed nationwide under paragraph (b) of this section exceeds the $16 million available for the DDAP–III, less any reserve that may be created under paragraph (e) of this section, total eligible losses of individual dairy operations that, as calculated as an overall percentage for each full disaster claim period applicable to the disaster declaration, are greater than 20 percent of the total base annual production will be paid at the maximum rate under paragraph (a) of this section to the extent available funding allows. A loss of over 20 percent in only one or two months during the applicable disaster claim period does not of itself qualify for the maximum per-pound payment. Rather, the priority level must be reached as an average over the whole disaster claim period for the relevant calendar year. Total eligible losses for a producer, as calculated under § 786.106, of less than or equal to 20 percent during the eligible claim period will then be paid at a rate, not to exceed the rate allowed in paragraph (a) of this section, determined by dividing the eligible losses of less than 20 percent by the funds remaining after making payments for all eligible losses above the 20-percent threshold.

(d) In no event will the payment exceed the value determined by multiplying the producer's total eligible loss times the average price received for commercial milk production in the producer's area as defined in paragraph (a) of this section.

(e) No participant will receive disaster benefits under this part that in combination with the value of production not lost would result in an amount that exceeds 95 percent of the value of the expected production for the relevant period as estimated by the Secretary. Unless otherwise program funds would not be fully expended, the sum of the value of the production not lost, if any; and the disaster payment received under this part, cannot exceed 95 percent of what the production's value would have been if there had been no loss. In no case, however, may the value of production and the payment exceed the value the milk would have without the loss.

(f) A reserve may be created to handle pending or disputed claims, but claims will not be payable once the available funding is expended.

§ 786.108 Availability of funds.

The total available program funds are $16 million as provided by section 9007 of Title IX of Public Law 110–28.

§ 786.109 Appeals.

Provisions of the appeal regulations set forth at 7 CFR parts 11 and 780 apply to this part. Appeals of determinations of ineligibility or payment amounts are subject to the limitations in §§ 786.107 and 786.108 and other limitations that may apply.

§ 786.110 Misrepresentation, scheme, or device.

(a) In addition to other penalties, sanctions, or remedies that may apply, a dairy producer is ineligible to receive assistance under this program if the producer is determined by FSA to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program,

(2) Made any fraudulent representation,

(3) Misrepresented any fact affecting a program determination, or

(4) Violated 7 CFR 795.17 and thus be ineligible for the year(s) of violation and the subsequent year.

(b) Any funds disbursed pursuant to this part to any person or dairy operation engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due. Interest will run from the date of the disbursement to the producer or other recipient of the payment from FSA. Any person or dairy operation engaged in acts prohibited by this section and any person or dairy operation receiving payment under this part is jointly and severally liable with other persons or dairy operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this part are in addition to other civil, criminal, or administrative remedies that may apply.

§ 786.111 Death, incompetence, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of an individual or entity that is eligible to receive benefits in accordance with this part, such alternate person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

§ 786.112 Maintaining records.

Persons applying for benefits under this program must maintain records and accounts to document all eligibility requirements specified herein and must keep such records and accounts for 3 years after the date of payment to their dairy operations under this program. Destruction of the records after such date is at the risk of the party required, by this part, to keep the records.

§ 786.113 Refunds; joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to meet any requirement or condition for payment under the application or this part, must be refunded to FSA.

(b) A refund required under this section is due with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in 7 CFR part 792. Notwithstanding any other regulation, interest will be due from the date of the disbursement to the producer or other recipient of the funds.

(c) Persons signing a dairy operation's application as having an interest in the operation will be jointly and severally liable for any refund and related charges found to be due under this section.

(d) In the event FSA determines a participant owes a refund under this part, FSA will charge program interest from the date of disbursement of the erroneous payment. Such interest will accrue at the rate that the United States Department of the Treasury charges FSA for funds plus additional charges as deemed appropriate by the Administrator or provided for by regulation or statute.

(e) The debt collection provisions of part 792 of this chapter applies to this part except as is otherwise provided in this part.

§ 786.114 Miscellaneous provisions.

(a) Payments or any portion thereof due under this part must be made without regard to questions of title under State law and without regard to any claim or lien against the livestock, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(b) Any producer entitled to any payment under this part may assign any payments in accordance with the provisions of 7 CFR part 1404.

§ 786.115 Termination of program.

This program will be terminated after payment has been made to those applicants certified as eligible pursuant to the application period established in § 786.104. All eligibility determinations will be final except as otherwise determined by the Deputy Administrator. Any claim for payment may be denied once the allowed funds are expended, irrespective of any other provision of this part.

Signed at Washington, DC, on February 20, 2008.

Thomas B. Hofeller,

Acting Administrator, Farm Service Agency.

[FR Doc. E8–4141 Filed 3–3–08; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0202; Directorate Identifier 2007–NM–185–AD; Amendment 39–15399; AD 2008–05–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes. This AD requires an inspection of the vertical fin lugs, skin, and skin edges for discrepancies; an inspection of the flight control cables, fittings, and pulleys in section 48 for signs of corrosion; an inspection of the horizontal stabilizer jackscrew, ball nut, and gimbal pins for signs of corrosion; and corrective actions if necessary. This AD results from reports indicating that moisture was found within the section 48 cavity. We are issuing this AD to ensure that the correct amount of sealant was applied around the vertical fin lugs, skin and the skin edges. Missing sealant could result in icing of the elevator cables, which could cause a system jam and corrosion of structural and flight control parts, resulting in reduced controllability of the airplane.

DATES: This AD is effective April 8, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 8, 2008.

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes. That NPRM was published in the **Federal Register** on November 19, 2007 (72 FR 64955). That NPRM proposed to require an inspection of the vertical fin lugs, skin, and skin edges for discrepancies; an inspection of the flight control cables, fittings, and pulleys in section 48 for signs of corrosion; an inspection of the horizontal stabilizer jackscrew, ball nut, and gimbal pins for signs of corrosion; and corrective actions if necessary.

Comments

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

Conclusion

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

Costs of Compliance

There are 829 airplanes of the affected design in the worldwide fleet. This AD affects about 372 airplanes of U.S. registry. The required actions take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is $29,760, or $80 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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–05–05 Boeing: Amendment 39–15399. Docket No. FAA–2007–0202; Directorate Identifier 2007–NM–185–AD.

Effective Date

(a) This airworthiness directive (AD) is effective April 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–53A1242, Revision 2, dated April 23, 2007.

Unsafe Condition

(d) This AD results from reports indicating that moisture was found within the section 48 cavity. We are issuing this AD to ensure that the correct amount of sealant was applied around the vertical fin lugs, skin and the skin edges. Missing sealant could result in icing of the elevator cables, which could cause a system jam and corrosion of structural and flight control parts, resulting in reduced controllability of the airplane.

Compliance

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

Inspections

(f) Within 2,500 flight cycles or 18 months after the effective date of this AD, whichever occurs first, do the detailed inspections specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53A1242, Revision 2, dated April 23, 2007.

(1) Do a detailed inspection of the vertical fin lugs, skin, and skin edges for discrepancies (i.e., water ingress; corrosion damage; and missing, insufficient, or cracked sealant).

(2) Do a detailed inspection of the flight control cables, fittings, and pulleys in section 48 for signs of corrosion.

(3) Do a detailed inspection of the horizontal stabilizer jackscrew, ball nut, and gimbal pins for signs of corrosion.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector (i.e., the person performing the inspection). Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Corrective Actions

(g) If any discrepancy or corrosion is found during any inspection required by paragraph (f) of this AD, before further flight, do the applicable corrective actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53A1242, Revision 2, dated April 23, 2007; except where the service bulletin specifies to contact Boeing, repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Credit for Actions Done Using the Previous Service Information

(h) Actions accomplished before the effective date of this AD in accordance with Boeing Service Bulletin 737–53A1242, dated October 17, 2002; or Revision 1, dated April 28, 2005; are considered acceptable for compliance with the corresponding actions specified in paragraphs (f) and (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

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

Material Incorporated by Reference

(j) You must use Boeing Service Bulletin 737–53A1242, Revision 2, dated April 23, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

Issued in Renton, Washington, on February 20, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3821 Filed 3–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0215; Directorate Identifier 2007–NM–216–AD; Amendment 39–15407; AD 2008–05–13]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The existing AD currently requires inspecting contactors 1K4XD, 2K4XD, and K4XA to determine the type of terminal base plate, and applying sealant on the terminal base plates if necessary. This AD requires an inspection to determine if certain alternating current (AC) service and utility bus contactors have a terminal base plate made from non-G9 melamine material, and corrective actions if necessary; or re-identification of the mounting tray of the contactors; as applicable. This AD also limits the applicability of the existing AD. This AD results from incidents of short circuit failures of certain AC contactors located in the avionics bay. We are issuing this AD to prevent short circuit failures of certain AC contactors, which could result in arcing and consequent smoke or fire.

DATES: This AD becomes effective April 8, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 8, 2008.

On August 9, 2006 (71 FR 45364, August 9, 2006), the Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin 601R–24–122, Revision A, dated July 13, 2006.

ADDRESSES: For service information identified in this AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–17–14, amendment 39–14735 (71 FR 49337, August 23, 2006). The existing AD applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That NPRM was published in the **Federal Register** on November 21, 2007 (72 FR 65474). That NPRM proposed to require inspecting contactors 1K4XD, 2K4XD, and K4XA to determine the type of terminal base plate, and applying sealant on the terminal base plates, if necessary. That NPRM also proposed to require an inspection to determine if certain alternating current (AC) service and utility bus contactors have a terminal base plate made from non-G9 melamine material, and corrective actions if necessary; or re-identification of the mounting tray of the contactors; as applicable.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received from one commenter.

Request To Give Credit for Actions Already Done

The commenter, Larry Nelson, requests that the phrase ''unless already accomplished'' be added to paragraph (h) of the NPRM after the compliance time. The commenter notes that Canadian airworthiness directive CF–2006–17R1, dated May 30, 2007 (referred to in the NPRM as related information), states, ''Within 12 months from the effective date of this directive, unless already accomplished.''

We do not agree. A similar phrase is already in paragraph (e) of this AD. Paragraph (e) states, ''You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.'' We have not changed the AD in this regard.

Request To Allow Earlier Revisions of Service Bulletin

The commenter, Larry Nelson, requests that Bombardier Service Bulletin 601R–24–123, dated November 13, 2006; or Revision A, dated December 7, 2006; be considered acceptable for compliance with the actions specified in paragraph (h) of the NPRM. The commenter states that the technical content in Bombardier Service Bulletin 601R–24–123, Revision B, dated February 16, 2007 (referred to in the NPRM as the appropriate source of service information for doing the proposed actions) did not change.

We do not agree. Bombardier Service Bulletin 601R–24–123, Revision B, includes additional actions (i.e., a general visual inspection, re-identification, and applicable corrective actions, as identified as Part C in the service bulletin) beyond those in earlier revisions of the service bulletin. Also, Canadian airworthiness directive CF–2006–17R1, which this AD parallels, refers to Revision B or later revisions of the service bulletin as the appropriate source of service information for doing the required actions. However, this AD does not refer to ''or later revisions'' of the service bulletin. Affected operators may request approval to use a later revision of the referenced service bulletin as an alternative method of compliance, under the provisions of paragraph (j) of the AD. We have not changed the AD in this regard.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 2006–17–14)	3	$80	$240	739	$177,360.
New actions (depending on the airplane configuration).	1 or 2	80	$80 or $160	739	Between $59,120 and $118,240.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14735 (71 FR 49337, August 23, 2006) and adding the following new airworthiness directive (AD):

2008–05–13 Bombardier, Inc. (Formerly Canadair): Amendment 39–15407. Docket No. FAA–2007–0215; Directorate Identifier 2007–NM–216–AD.

Effective Date

(a) This AD becomes effective April 8, 2008.

Affected ADs

(b) This AD supersedes AD 2006–17–14.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 440) airplanes, certificated in any category; serial numbers 7003 through 7990 inclusive, and 8000 through 8070 inclusive.

Unsafe Condition

(d) This AD results from incidents of short circuit failures of certain alternating current (AC) contactors located in the avionics bay. We are issuing this AD to prevent short circuit failures of certain AC contactors, which could result in arcing and consequent smoke or fire.

Compliance

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

REQUIREMENTS OF AD 2006–17–14

Inspection and Corrective Action

(f) Within 800 flight hours or four months after September 7, 2006 (the effective date of AD 2006–17–14), whichever occurs first: Do a general visual inspection of AC bus contactors 1K4XD and 2K4XD, part number (P/N) D–18ZZA, and the bus contactor K4XA, P/N D–7GRZ, to determine which contactors have an Ultem 2200 terminal base plate (i.e., the plate is made from a black molded thermal plastic material), and apply RTV sealant to the terminal base plate, as applicable, by doing all the actions specified in the Accomplishment Instructions of Bombardier Service Bulletin 601R–24–122, Revision A, dated July 13, 2006. Do all applicable applications of sealant before further flight.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Previous Actions Accomplished According to Other Service Information

(g) Actions accomplished before September 7, 2006, in accordance with Bombardier Drawing Number K601R50180, dated June 2, 2006; or Bombardier Service Bulletin 601R–24–122, dated June 27, 2006; are considered acceptable for compliance with the actions specified in paragraph (f) of this AD.

NEW REQUIREMENTS OF THIS AD

Inspection and Corrective Action

(h) Within 12 months after the effective date of this AD, do a general visual inspection, re-identification, and corrective actions, as applicable, by doing all the applicable actions specified in the Accomplishment Instructions of Bombardier Service Bulletin 601R–24–123, Revision B, dated February 16, 2007. Do the applicable corrective action before further flight. Accomplishment of these actions constitutes terminating action for the requirements of this AD.

Parts Installation

(i) As of the effective date of this AD, no person may install any AC contactor 1K4XD, 2K4XD, or K4XA, having a non-G9 melamine terminal base plate, on any airplane.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, New York 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.

Related Information

(k) Canadian airworthiness directive CF–2006–17R1, dated May 30, 2007, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Bombardier Service Bulletin 601R–24–122, Revision A, dated July 13, 2006; and Bombardier Service Bulletin 601R–24–123, Revision B, dated February 16, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin 601R–24–123, Revision B, dated February 16, 2007, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On August 9, 2006 (71 FR 45364, August 9, 2006), the Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin 601R–24–122, Revision A, dated July 13, 2006.

(3) Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on February 25, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3982 Filed 3–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0338; Directorate Identifier 2007–NM–139–AD; Amendment 39–15396; AD 2008–05–02]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That AD currently requires reviewing the airplane maintenance records for recent reports of vibration from the tail section or rudder pedals. The existing AD also currently requires repetitively inspecting the skin, attachment fittings, and control rods of rudder II to detect cracking, loose parts, wear, or damage; and related investigative/corrective actions if necessary. This new AD requires the existing repetitive inspection to be done with new service information. This new AD also requires replacing the locking tab washers on the control rods of the rudder II and installing springs on the hinge assemblies of the rudder II, which would terminate the repetitive inspection requirements. This AD results from reports of rudder vibration due to wear. We are issuing this AD to prevent failure of multiple hinge fittings, which could result in severe vibration, and to prevent failure of the rudder control rods, which could result in jamming of the rudder II; and possible structural failure and reduced controllability of the airplane.

DATES: This AD becomes effective April 8, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 8, 2008.

On December 23, 2005 (70 FR 72902, December 8, 2005), the Director of the Federal Register approved the incorporation by reference of EMBRAER Alert Service Bulletin 145LEG–55–A010, dated August 26, 2005; and EMBRAER Alert Service Bulletin 145–55–A036, Revision 01, dated September 5, 2005.

ADDRESSES: For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2005–25–04, amendment 39–14397 (70 FR 72902, December 8, 2005). The existing AD applies to all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That NPRM was published in the **Federal Register** on December 17, 2007 (72 FR 71281). That NPRM proposed to continue to require reviewing the airplane maintenance records for recent reports of vibration from the tail section or rudder pedals. The NPRM also proposed to continue to require repetitively inspecting the skin, attachment fittings, and control rods of rudder II to detect cracking, loose parts, wear, or damage; and related investigative/corrective actions if necessary. In addition to the existing requirements, the NPRM proposed to require that the existing repetitive inspection be done with new service information. The NPRM also proposed to require replacing the locking tab washers on the control rods of the rudder II and installing springs on the

hinge assemblies of the rudder II, which would terminate the repetitive inspection requirements.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the NPRM or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Records review (required by AD 2005–25–04)	1	$80	None	$80	463	$37,040
Terminating action (new action)	5	80	$644	1,044	463	483,372

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14397 (70 FR 72902, December 8, 2005) and by adding the following new airworthiness directive (AD):

2008–05–02 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–15396. Docket No. FAA–2007–0338; Directorate Identifier 2007–NM–139–AD.

Effective Date

(a) This AD becomes effective April 8, 2008.

Affected ADs

(b) This AD supersedes AD 2005–25–04.

Applicability

(c) This AD applies to all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from reports of rudder vibration due to wear. We are issuing this AD to prevent failure of multiple hinge fittings, which could result in severe vibration, and to prevent failure of the rudder control rods, which could result in jamming of the rudder II; and possible structural failure and reduced controllability of the airplane.

Compliance

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

REQUIREMENTS OF AD 2005–25–04

Records Review

(f) Within 5 days after December 23, 2005 (the effective date of AD 2005–25–04): Review the airplane maintenance records to determine whether any vibration from the tail section or rudder pedals was reported within 120 flight hours or 100 flight cycles before December 23, 2005.

Inspection

(g) At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD: Do a detailed inspection of the skin, attachment fittings, and control rods of rudder II to detect cracks, loose parts, wear, or damage. Inspect in accordance with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 145LEG–55–A010, dated August 26, 2005 (for Model EMB–135BJ airplanes); or 145–55–A036, Revision 01, dated September 5, 2005 (for all other airplanes); except as provided by paragraph (l) of this AD. Do all related investigative/corrective actions before further flight by doing all applicable actions specified in the service bulletin; except as required by paragraphs (i) and (l) of this AD. Repeat the inspection at intervals not to exceed 2,500 flight hours, except as required by paragraph (h) of this AD.

(1) If any vibration was reported during the time period specified in paragraph (f) of this AD, inspect within 2 days after the records review.

(2) If no vibration was reported during the time period specified in paragraph (f) of this AD, except as required by paragraph (h) of this AD, inspect before the later of:

(i) 2,500 total accumulated flight hours.

(ii) 600 flight hours or 500 flight cycles, whichever occurs first, after December 23, 2005.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as a mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(h) If any vibration from the tail section or rudder pedals is reported after December 23, 2005, do the inspection specified in paragraph (g) of this AD before the next flight. Repeat the inspection thereafter at intervals not to exceed 2,500 flight hours.

Note 2: EMBRAER Alert Service Bulletins 145LEG–55–A010, dated August 26, 2005; and 145–55–A036, Revision 01, dated September 5, 2005; refer to EMBRAER Service Bulletins 145LEG–55–0008, Revision 01, dated January 14, 2005; 145LEG–55–0009, dated June 21, 2004; and 145–55–0034, Revision 01, dated January 14, 2005; as additional sources of service information for installing washers in the rudder II hinge fittings and control rod assembly.

Exceptions to Service Bulletin Specifications

(i) Where EMBRAER Alert Service Bulletins 145LEG–55–A010 and 145–55–A036 specify to contact EMBRAER for repair instructions, operators must perform the repair before further flight using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Departmento de Aviacao Civil (or its delegated agent).

(j) Although EMBRAER Alert Service Bulletins 145LEG–55–A010 and 145–55–A036 recommend sending a report of the inspection results to the manufacturer, this AD does not require a report.

Credit for Prior Accomplishment of Earlier Service Bulletin

(k) For Model –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes: Accomplishment of the inspection and applicable related investigative/corrective actions before December 23, 2005, in accordance with EMBRAER Alert Service Bulletin 145–55–A036, dated August 20, 2005, is acceptable for compliance with the corresponding requirements of this AD.

NEW REQUIREMENTS OF THIS AD

New Revision to Service Bulletins

(l) As of the effective date of this AD, use only the Accomplishment Instructions of EMBRAER Alert Service Bulletin 145LEG–55–A010, Revision 02, dated May 16, 2006 (for Model EMB–135BJ airplanes); or 145–55–A036, Revision 03, dated May 16, 2006 (for all other airplanes); as applicable; to do the actions required by paragraphs (g) and (h) of this AD, until the actions required by paragraph (m) of this AD are done.

Note 3: EMBRAER Alert Service Bulletin 145LEG–55–A010, Revision 02, dated May 16, 2006 (for Model EMB–135BJ airplanes) refers to EMBRAER Service Bulletins 145LEG–55–0008, Revision 02, dated May 26, 2006; and 145LEG–55–0009, Revision 01, dated November 23, 2005; as additional sources of service information for installing washers in the rudder II hinge fittings and control rod assembly.

Note 4: EMBRAER Alert Service Bulletin 145–55–A036, Revision 03, dated May 16, 2006 (for EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes), refers to EMBRAER Service Bulletins 145–55–0034, Revision 02, dated May 25, 2006; and 145–55–0035, Revision 02, dated March 28, 2006; as additional sources of service information for installing washers in the rudder II hinge fittings and control rod assembly.

Terminating Action

(m) Within 5,500 flight hours or 36 months after the effective date of this AD, whichever occurs first, replace the locking tab washers on the control rods of the rudder II and install springs on the hinge assemblies of the rudder II, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–55–0011, Revision 01, dated January 23, 2007 (for Model EMB–135BJ airplanes); or 145–55–0038, Revision 01, dated January 23, 2007 (for all other airplanes); as applicable. Accomplishment of the replacement and installation constitutes terminating action for the requirements of this AD.

Credit for Prior Accomplishment of Earlier Service Bulletins

(n) Actions done before the effective date of this AD in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–55–0011, dated May 12, 2006 (for Model EMB–135BJ airplanes); or 145–55–0038, dated May 12, 2006 (for all other airplanes); as applicable; are acceptable for compliance with the requirements of paragraph (m) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously in accordance with AD 2005–25–04 are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(p) Brazilian airworthiness directive 2005–09–02R2, effective May 10, 2007, also addresses the subject of this AD.

Material Incorporated by Reference

(q) You must use the service information identified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—ALL MATERIAL INCORPORATED BY REFERENCE

EMBRAER Service Bulletin	Revision level	Date
Alert Service Bulletin 145LEG–55–A010	[1]	August 26, 2005.
Alert Service Bulletin 145LEG–55–A010	02	May 16, 2006.
Alert Service Bulletin 145–55–A036	01	September 5, 2005.
Alert Service Bulletin 145–55–A036	03	May 16, 2006.
Service Bulletin 145LEG–55–0011	01	January 23, 2007.
Service Bulletin 145–55–0038	01	January 23, 2007.

[1] Original.

(1) The Director of the Federal Register approved the incorporation by reference of the service information identified in Table 2 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 2.—NEW MATERIAL INCORPORATED BY REFERENCE

EMBRAER Service Bulletin	Revision level	Date
Alert Service Bulletin 145LEG–55–A010	02	May 16, 2006.

TABLE 2.—NEW MATERIAL INCORPORATED BY REFERENCE—Continued

EMBRAER Service Bulletin	Revision level	Date
Alert Service Bulletin 145–55–A036	03	May 16, 2006.
Service Bulletin 145LEG–55–0011	01	January 23, 2007.
Service Bulletin 145–55–0038	01	January 23, 2007.

(2) On December 23, 2005 (70 FR 72902, December 8, 2005), the Director of the Federal Register approved the incorporation by reference of EMBRAER Alert Service Bulletin 145LEG–55–A010, dated August 26, 2005; and EMBRAER Alert Service Bulletin 145–55–A036, Revision 01, dated September 5, 2005.

(3) Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on February 20, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3748 Filed 3–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0204; Directorate Identifier 2007–NM–083–AD; Amendment 39–15397; AD 2008–05–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SP, and 747SR Series Airplanes Powered by General Electric (GE) CF6–45/50 and Pratt & Whitney (P&W) JT9D–70, JT9D–3 or JT9D–7 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SP, and 747SR series airplanes powered by General Electric (GE) CF6–45/50 and Pratt & Whitney (P&W) JT9D–70, JT9D–3, or JT9D–7 series engines. This AD requires repetitive inspections to find cracks and broken fasteners of the rear engine mount bulkhead of the inboard and outboard nacelle struts, and repair if necessary. For certain airplanes, this AD mandates a terminating modification for certain inspections of the inboard and outboard nacelle struts. This AD results from reports of web and frame cracks and sheared attachment fasteners on the inboard and outboard nacelle struts. We are issuing this AD to detect and correct cracks and broken fasteners of the inboard and outboard nacelle struts, which could result in possible loss of the rear engine mount bulkhead load path and consequent separation of the engine from the airplane.

DATES: This AD is effective April 8, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 8, 2008.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SP, and 747SR series airplanes powered by General Electric (GE) CF6–45/50 and Pratt & Whitney (P&W) JT9D–70, JT9D–3, or JT9D–7 series engines. That NPRM was published in the **Federal Register** on November 19, 2007 (72 FR 64961). That NPRM proposed to require repetitive inspections to find cracks and broken fasteners of the rear engine mount bulkhead of the inboard and outboard nacelle struts, and repair if necessary. For certain airplanes, that NPRM proposed to mandate a terminating modification for certain inspections of the inboard and outboard nacelle struts.

Comments

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

Conclusion

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

Costs of Compliance

There are about 460 airplanes of the affected design in the worldwide fleet. This AD affects about 135 airplanes of U.S. registry.

It takes about 4 work hours per airplane to accomplish the required detailed inspection, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the required inspection is $43,200, or $320 per airplane, per inspection cycle.

It takes about 32 work hours per airplane to accomplish the required high frequency eddy current inspection, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the required high frequency eddy current inspection is $345,600, or $2,560 per airplane, per inspection cycle.

For Groups 1, 2, and 5 airplanes, it takes between approximately 10 and 95 work hours per strut (four struts per airplane) to accomplish the required modification, depending on airplane configuration, at an average labor rate of $80 per work hour. Parts cost for the

fasteners is between $269 and $897 per strut. Based on these figures, the cost impact of the required modification is between $4,276 and $33,988 per airplane. We are unable to provide specific information as to the cost of the actual parts other than the fasteners that are required to accomplish the required modification since the parts will be supplied from operator stock.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,
(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–05–03 Boeing: Amendment 39–15397. Docket No. FAA–2007–0204; Directorate Identifier 2007–NM–083–AD.

Effective Date

(a) This airworthiness directive (AD) is effective April 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 747–100, –100B, –100B SUD,—200B,—200C, –200F, –300, 747SP, and 747SR series airplanes; certificated in any category; powered by General Electric (GE) CF6–45/50 and Pratt & Whitney (P&W) JT9D–70, JT9D–3, or JT9D–7 series engines; as identified in Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006.

Unsafe Condition

(d) This AD results from reports of web and frame cracks and sheared attachment fasteners on the inboard and outboard nacelle strut. We are issuing this AD to detect and correct cracks and broken fasteners of the inboard and outboard nacelle struts, which could result in possible loss of the rear engine mount bulkhead load path and consequent separation of the engine from 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.

Compliance Times

(f) Do all applicable actions specified in paragraphs (g), (h), and (i) of this AD at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006, except that where paragraph 1.E. of the service bulletin specifies starting the compliance time from ''* * * the release date of Revision 1 of this service bulletin,'' this AD requires starting the compliance time from the effective date of this AD.

Initial and Repetitive Inspections/Corrective Actions

(g) For all airplanes: Perform detailed and high frequency eddy current inspections for cracks and broken fasteners of the rear engine mount bulkhead of the inboard and outboard nacelle struts, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006. Repeat the applicable inspection and actions thereafter at the applicable interval specified in paragraph 1.E., ''Compliance,'' of the service bulletin. Accomplishing the applicable repair (Repair 1, 2, 3, or 4, or repair per the Boeing 747 Structural Repair Manual, Section 54–11–03 or 54–12–03) terminates the requirements in this paragraph for that nacelle strut only.

Modification

(h) For Groups 1, 2, and 5 airplanes: Do the applicable modification (Repair 2, 3, or 4) of the rear engine mount bulkhead of the inboard and outboard nacelle struts, and all the applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006. Accomplishing this modification terminates the requirements in paragraph (g) of this AD for that nacelle strut only.

Post-Modification Inspection/Corrective Actions

(i) For Groups 1, 2, and 5 airplanes on which the applicable corrective actions (Repair 1, 2, 3, or 4) required by paragraph (g) of this AD have been accomplished; or the applicable modification (Repair 2, 3, or 4) required by paragraph (h) of this AD has been accomplished: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006, or within 6 months after the effective date of this AD, whichever occurs later, perform detailed and high frequency eddy current inspections for cracks and broken fasteners of the rear engine mount bulkhead of the inboard and outboard nacelle struts, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006. Repeat the applicable inspections and actions thereafter at the applicable interval specified in paragraph 1.E., ''Compliance,'' of the service bulletin.

Exception to Service Bulletin

(j) If any crack or any broken fastener is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006, specifies to contact Boeing for appropriate action: Before further flight, repair the discrepancy using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time

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

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

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin 747–54A2202, Revision 1, dated June 22, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

Issued in Renton, Washington, on February 20, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3749 Filed 3–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28433; Directorate Identifier 2007–CE–052–AD; Amendment 39–15403; AD 2008–05–09]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 172, 182, and 206 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) 172, 182, and 206 series airplanes. This AD requires you to remove the crew seats, modify the seat base/back attach brackets, and reinstall the seats of the affected airplanes. This AD results from reports of the seat base/back attach bracket failing where it is welded to the seat base. We are issuing this AD to prevent failure of the seat base/back attach brackets, which could result in the seats collapsing backwards during flight with consequent loss of control.

DATES: This AD becomes effective on April 8, 2008.

On April 8, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: To get the service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax: (316) 942–9006.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is FAA–2007–28433; Directorate Identifier 2007–CE–052–AD.

FOR FURTHER INFORMATION CONTACT: Gary Park, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4123; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On July 12, 2007, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Models 172, 182, and 206 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 19, 2007 (72 FR 39584). The NPRM proposed to remove the crew seats, modify the seat base/back attach brackets, and reinstall the seats of the affected airplanes and seats 3 and 4 on 206 series airplanes.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Number of Affected Airplanes

Jack Buster with the Modification and Replacement Part Association (MARPA) noted that the airworthiness concern sheet stated the proposed AD action affected 2,770 airplanes and the actual proposed AD stated the action affected 1,556 airplanes. He requests we clarify the number of the affected airplanes.

The FAA agrees that the numbers in the airworthiness concern sheet and the proposed AD differ. There are 2,770 airplanes worldwide but only 1,556 airplanes on the U.S. Registry. In the Cost of Compliance section of the AD preamble we state how many airplanes are listed on the U.S. Registry.

We will not change the final rule AD action as a result of this comment.

Comment Issue No. 2: Availability of Incorporated by Reference (IBR) Documents in the Docket Management System (DMS)

Jack Buster of MARPA requests IBR documents be available to the public by publication in the DMS.

The FAA has transitioned from the DMS to the government-wide Federal Docket Management System (FDMS). We are currently reviewing issues surrounding the posting of service bulletins in the FDMS as part of the AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised.

Comment Issue No. 3: Exempting Non-crew Seats From This AD Action

The Aircraft Owners and Pilots Association requests that the FAA exempt non-crew seats from the AD action. Modification of the third and fourth seats on the Cessna Model 206 is estimated at just under $1,000 per aircraft and does not directly address the safety of flight issue proposed for this AD. The third and fourth seats are not crew seats and pose little to no risk that a seat collapse could cause the pilot to lose control of the airplane.

The FAA agrees that the modification of the third and fourth seats on the Cessna 206 does not directly address the safety of flight issue proposed for this AD.

We will change the final rule AD action as a result of this comment and not include seats 3 and 4 on 206 series airplanes.

Conclusion

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

• Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

• do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 1,556 airplanes in the U.S. registry.

We estimate the following costs to do the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 work-hours × $80 per hour = $400 (for two crew seats)	$800 (for two crew seats)	$1,200	$1,867,200

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–28433; Directorate Identifier 2007–CE–052–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2008–05–09 Cessna Aircraft Company: Amendment 39–15403; Docket No. FAA–2007–28433; Directorate Identifier 2007–CE–052–AD.

Effective Date

(a) This AD becomes effective on April 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Models	Serial Nos.
(1) 172R	17281211 through 17281356.
(2) 172S	172S9621 through 172S10310, 172S10312 through 172S10324, 172S10327 through 172S10332, 172S10334 through 172S10349, 172S10351 through 172S10374, 172S10376 through 172S10386, 172S10388 through 172S10408, 172S10410 through 172S10412, 172S10414 through 172S10417, and 172S10421 through 172S10423.
(3) 182T	18281328 through 18281867, 18281869 through 18281871, 18281873 through 18281875, and 18281877.
(4) T182T	T18208240 through T18208651, T18208654, T18208656 through T18208659, T18208663, T18208664, and T18208667 through T18208668.
(5) 206H	20608216 through 20608283.
(6) T206H	T20608445 through T20608662, T20608664 through T20608671, T20608673, T20608674, T20608676 through T20608681, T20608683 through T20608689, T20608691, T20608692, T20608694 through T20608696, T20608699 through T20608701, T20608703, and T20608704.

Unsafe Condition

(d) This AD results from reports of the seat base/back attach bracket failing where it is welded to the seat base. We are issuing this AD to prevent failure of the seat base/back attach brackets, which could result in the seats collapsing backwards during flight with consequent loss of control.

Compliance

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

Actions	Compliance	Procedures
Remove, modify, and reinstall the crew seats ...	Within the next 50 hours time-in-service after April 8, 2008 (the effective date of this AD) or within the next 6 months after April 8, 2008 (the effective date of this AD), whichever occurs first.	Follow Cessna Aircraft Company Single Engine Modification Kit No. MK206–25–10, dated April 23, 2007, as specified in Cessna Aircraft Company Service Bulletin SB07–25–04, dated April 23, 2007.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Gary Park, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4123; fax: (316) 946–4107. 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.

Related Information

(g) To get copies of the service information referenced in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax: (316) 942–9006. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://dms.dot.gov.* The docket number is Docket No. FAA–2007–28433; Directorate Identifier 2007–CE–052–AD.

Material Incorporated by Reference

(h) You must use Cessna Aircraft Company Single Engine Modification Kit No. MK206–25–10, dated April 23, 2007, as specified in Cessna Aircraft Company Service Bulletin SB07–25–04, dated April 23, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax: (316) 942–9006.

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

Issued in Kansas City, Missouri, on February 22, 2008.

Patrick R. Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3771 Filed 3–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0224; Directorate Identifier 2007–NM–188–AD; Amendment 39–15400; AD 2008–05–06]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. This AD requires repetitive inspections for fatigue cracking in the longitudinal floor beam web, upper chord, and lower chord located at certain body stations, and repair if necessary. This AD results from several reports of cracks in the center wing box longitudinal floor beams, upper chord, and lower chord. We are issuing this AD to detect and correct fatigue cracking of the upper and lower chords and web of the longitudinal floor beams, which could result in rapid loss of cabin pressure.

DATES: This AD is effective April 8, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 8, 2008.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on November 26, 2007 (72 FR 65911). That NPRM proposed to require repetitive inspections for fatigue cracking in the longitudinal floor beam web, upper chord, and lower chord located at certain body stations, and repair if necessary.

Comments

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

Conclusion

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

Costs of Compliance

There are 2,852 airplanes of the affected design in the worldwide fleet. This AD affects 652 airplanes of U.S. registry. The required inspection takes approximately 13 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the required inspection for U.S. operators is $678,080, or $1,040 per airplane, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–05–06 Boeing: Amendment 39–15400. Docket No. FAA–2007–0224; Directorate Identifier 2007–NM–188–AD.

Effective Date

(a) This airworthiness directive (AD) is effective April 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–57–1296, dated June 13, 2007.

Unsafe Condition

(d) This AD results from several reports of cracks in the center wing box longitudinal floor beams, upper chord, and lower chord. We are issuing this AD to detect and correct fatigue cracking of the upper and lower chords and web of the longitudinal floor beams, which could result in rapid loss of cabin pressure.

Compliance

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

Repetitive Inspections

(f) Do the various inspections for fatigue cracks in the longitudinal floor beam web, upper chord, and lower chord, located at the applicable body stations specified in the Accomplishment Instructions of Boeing Service Bulletin 737–57–1296, dated June 13, 2007, by doing all the actions specified in the Accomplishment Instructions of the service bulletin, except as provided by paragraph (g) of this AD. Do the inspections at the time specified in paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For Groups 1 and 2 airplanes as identified in the service bulletin: Do the inspections at the applicable initial compliance time listed in paragraph 1.E., ''Compliance,'' of the service bulletin; except, where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD. Repeat the inspections thereafter at the intervals specified in paragraph 1.E., ''Compliance,'' of the service bulletin.

(2) For Group 3 airplanes as identified in the service bulletin: Do the inspections at the applicable initial compliance time listed in paragraph 1.E., ''Compliance,'' of the service bulletin; except, where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD. Repeat the inspections thereafter at the intervals specified in paragraph 1.E., ''Compliance,'' of the service bulletin.

(g) If any crack is found during any inspection required by this AD, and Boeing Service Bulletin 737–57–1296, dated June 13, 2007, specifies contacting Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(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.

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

Material Incorporated by Reference

(i) You must use Boeing Service Bulletin 737–57–1296, dated June 13, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

Issued in Renton, Washington, on February 20, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3810 Filed 3–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29334; Directorate Identifier 2006–NM–268–AD; Amendment 39–15398; AD 2008–05–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 Airplanes and A340–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

[A]ll permanent fuselage skin * * * and lap joint doubler * * * repair principles published in the SRM (Structural Repair Manual) * * * have been replaced with Oct/05 Revision by updated, simplified and harmonized repair principles.

These updates led to the de-validation of some repairs and to reassess the repair inspection requirements. This situation if not corrected, can affect the aircraft structural integrity with a possible risk of decompression.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 8, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 8, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 28, 2007 (72 FR 55108). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A review of the repair substantiations of the SRM (Structural Repair Manual) has been done to take into account the latest aircraft operational data (Aircraft Weight Variant and Fatigue Flight Mission Profiles). As a result, all permanent fuselage skin (Figure 202–210/213–214) and lap joint doubler (Figure 215–216) repair principles published in the SRM chapter 53–00–11, Page Block 201 have been replaced with Oct/05 Revision by updated, simplified and harmonized repair principles.

These updates led to the de-validation of some repairs and to reassess the repair inspection requirements. This situation if not corrected, can affect the aircraft structural integrity with a possible risk of decompression.

In order to maintain the structural integrity, this Airworthiness Directive (AD) renders mandatory the inspection of the fuselage to identify possible permanent skin repairs and permanent longitudinal lap joint repairs and to apply the associated corrective actions.

The corrective actions include contacting Airbus for repair/inspection instructions, and repair, as applicable, for skin repairs or longitudinal lap joint repairs that were done in accordance with the repair principles in Airbus A330 or A340–200/300 SRM chapter 53–00–11, Page Block 201, before October 2005, or repairs that were done without using an individual repair design approval sheet provided by Airbus. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 9 products of U.S. registry. We also estimate that it will take about 9 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $6,480, or $720 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–05–04 Airbus: Amendment 39–15398. Docket No. FAA–2007–29334; Directorate Identifier 2006–NM–268–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–200 and –300 series airplanes; all certified models, all serial numbers; certificated in any category; except those on which Airbus Modification 49144 (install rudder fly by wire) has been embodied in production.

Subject

(d) Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A review of the repair substantiations of the SRM (Structural Repair Manual) has been done to take into account the latest aircraft operational data (Aircraft Weight Variant and Fatigue Flight Mission Profiles). As a result, all permanent fuselage skin (Figure 202–210/213–214) and lap joint doubler (Figure 215–216) repair principles published in the SRM chapter 53–00–11, Page Block 201 have been replaced with Oct/05 Revision by updated, simplified and harmonized repair principles.

These updates led to the de-validation of some repairs and to reassess the repair inspection requirements. This situation if not corrected, can affect the aircraft structural integrity with a possible risk of decompression.

In order to maintain the structural integrity, this Airworthiness Directive (AD) renders mandatory the inspection of the fuselage to identify possible permanent skin repairs and permanent longitudinal lap joint repairs and to apply the associated corrective actions.

The corrective actions include contacting Airbus for repair/inspection instructions, and repair, as applicable, for skin repairs or longitudinal lap joint repairs that were done in accordance with the repair principles in Airbus A330 or A340–200/300 SRM chapter 53–00–11, Page Block 201, before October 2005, or repairs that were done without using an individual repair design approval sheet provided by Airbus.

Actions and Compliance

(f) Within 18 months after the effective date of this AD, unless already done, do the following actions.

(1) For airplanes with Weight Variant (WV) greater than WV 004 and lower than or equal to WV 027 (for Model A330 airplanes) or WV 029 (for Model A340–200 and –300 series airplanes): Do the actions specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Perform a detailed visual inspection of the fuselage outer skin for permanent skin repairs in the area between frame (FR) 54 and FR 58; and for permanent longitudinal lap joint repairs in the area between FR 53.3 and FR 58 (for Section 15, between FR 53.3 and FR 54, only in the area between stringer (STGR) 22LH (left-hand) and STGR 22RH (right-hand) upper shell); and as applicable, apply the corrective actions before further flight. Perform the actions in accordance with the instructions given in Airbus Service Bulletin A330–53–3161, dated April 14, 2006; or A340–53–4166, dated April 6, 2006; as applicable.

(ii) Perform a detailed visual inspection of the fuselage outer skin for permanent skin repairs in the area between FR 18 and FR 38, and between FR 58 and FR 91; and for permanent longitudinal lap joint repairs in the area between FR 18 and FR 53.3, and between FR 58 and FR 91 (for Section 15, between FR 39 and FR 53.3, only in the area between STGR 22LH and STGR 22RH upper shell); and as applicable, apply the corrective actions before further flight. Perform the actions in accordance with the instructions given in Airbus Service Bulletin A330–53–3162 or A340–53–4167, both dated April 6, 2006, as applicable.

(2) For airplanes with WV lower than or equal to WV 004: Perform a detailed visual inspection of the fuselage outer skin for permanent skin repairs in the area between FR 18 and FR 38, and between FR 54 and FR 91; and for permanent longitudinal lap joint repairs in the area between FR 18 and FR 91 (for Section 15, between FR 39 and FR 54, only in the area between STGR 22LH and STGR 22RH upper shell); and as applicable, apply the corrective actions before further flight. Perform the actions in accordance with the instructions given in Airbus Service Bulletin A330–53–3162 or A340–53–4167, both dated April 6, 2006, as applicable.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Backman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; 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 Directives 2006–0332 and 2006–0333, both dated October 27, 2006; and the Airbus service bulletins identified in Table 1 of this AD, for related information.

TABLE 1.—SERVICE INFORMATION

Airbus Service Bulletin	Date
A330–53–3161	April 14, 2006.
A330–53–3162	April 6, 2006.
A340–53–4166	April 6, 2006.
A340–53–4167	April 6, 2006.

Material Incorporated by Reference

(i) You must use the service information specified in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of

this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Date
A330–53–3161	April 14, 2006.
A330–53–3162	April 6, 2006.
A340–53–4166	April 6, 2006.
A340–53–4167	April 6, 2006.

Issued in Renton, Washington, on February 20, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3813 Filed 3–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0182; Directorate Identifier 2007–NM–138–AD; Amendment 39–15401; AD 2008–05–07]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Fan Jet Falcon, Fan Jet Falcon Series C, D, E, F, and G Airplanes; Model Mystere-Falcon 200 Airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

One occurrence has been reported where a maintenance operation had been performed on the elevator controls, and bellcrank * * * located in the Right Hand MLG (main landing gear) wheel well was mistakenly installed upside down. This discrepancy and improper installation caused an unexpected 5° positioning offset of the elevator control surfaces leading to a hazardous condition on landing, [involving] the pilot being unable to flare the aircraft as needed * * * [which resulted in a hard landing].

The unsafe condition is reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 8, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 8, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 13, 2007 (72 FR 63829). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

One occurrence has been reported where a maintenance operation had been performed on the elevator controls, and bellcrank P/N (part number) MY20273017 or P/N MY20273017015 located in the Right Hand MLG (main landing gear) wheel well was mistakenly installed upside down. This discrepancy and improper installation caused an unexpected 5° positioning offset of the elevator control surfaces leading to a hazardous condition on landing, [involving] the pilot being unable to flare the aircraft as needed * * * [which resulted in a hard landing].

The purpose of this AD is to prevent reoccurrence of this kind of incident introducing disabusing markings on the incriminated parts by applying SB (Service Bulletin) F20–768 or SB F200–122 as appropriate.

The unsafe condition is reduced controllability of the airplane. Corrective actions include verifying the correct assembly of the elevator bellcrank and re-installing if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 255 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $9 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 parts. 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 this AD to the U.S. operators to be $63,495, or $249 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–05–07 Dassault Aviation (Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)): Amendment 39–15401. Docket No. FAA–2007–0182; Directorate Identifier 2007–NM–138–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Dassault Model Fan Jet Falcon, Fan Jet Falcon series C, D, E, F, and G airplanes; Model Mystere-Falcon 200 airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

One occurrence has been reported where a maintenance operation had been performed on the elevator controls, and bellcrank P/N (part number) MY20273017 or P/N MY20273017015 located in the Right Hand MLG (main landing gear) wheel well was mistakenly installed upside down. This discrepancy and improper installation caused an unexpected 5° positioning offset of the elevator control surfaces leading to a hazardous condition on landing, [involving] the pilot being unable to flare the aircraft as needed * * * [which resulted in a hard landing].

The purpose of this AD is to prevent reoccurrence of this kind of incident introducing disabusing markings on the incriminated parts by applying SB (Service Bulletin) F20–768 or SB F200–122 as appropriate.

The unsafe condition is reduced controllability of the airplane. Corrective actions include verifying the correct assembly of the elevator bellcrank and re-installing if necessary.

Actions and Compliance

(f) Within 74 months from the effective date of this AD, unless already done, do the following actions.

(1) Verify the correct assembly of the elevator bellcrank P/N (part number) MY20273–17 or P/N MY20273–17–15 at frame 26, as instructed in Dassault Service Bulletin F20–768, dated May 23, 2006; or Dassault Service Bulletin F200–122, dated May 23, 2006; as applicable.

(2) If the elevator bellcrank is found in the reverse orientation, reinstall it prior to next flight in accordance with Dassault Service Bulletin F20–768, dated May 23, 2006; or Dassault Service Bulletin F200–122, dated May 23, 2006; as applicable.

(3) Label the elevator bellcrank as instructed in Dassault Service Bulletin F20–768, dated May 23, 2006; or Dassault Service Bulletin F200–122, dated May 23, 2006; as applicable.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2006–0185, dated July 6, 2006, and Dassault Service Bulletins F20–768 and F200–122, both dated May 23, 2006, for related information.

Material Incorporated by Reference

(i) You must use Dassault Service Bulletin F20–768, dated May 23, 2006; or Dassault Service Bulletin F200–122, dated May 23, 2006; as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on February 20, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3816 Filed 3–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0369; Directorate Identifier 2007–NM–258–AD; Amendment 39–15402; AD 2008–05–08]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

Some occurrences have been reported where life rafts were difficult to remove from inside divan compartment. Investigations revealed that:

—Life raft was incorrectly stowed, with deployment straps inboard;

—Life raft had not been repacked to specified dimensions

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 8, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 8, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 20, 2007 (72 FR 72273). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Some occurrences have been reported where life rafts were difficult to remove from inside divan compartment. Investigations revealed that:

—Life raft was incorrectly stowed, with deployment straps inboard;

—Life raft had not been repacked to specified dimensions

The purpose of this Airworthiness Directive (AD) is to verify that all life rafts are stowed correctly with deployment straps outboard, and are repacked to specified dimensions.

Corrective actions include correctly reinstalling an incorrectly stowed life raft, installing a properly repacked life raft, and installing placards. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 25 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $68 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 parts. 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 this AD to the U.S. operators to be $3,700, or $148 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–05–08 Dassault Aviation: Amendment 39–15402. Docket No. FAA–2007–0369; Directorate Identifier 2007–NM–258–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Mystere-Falcon 50 airplanes, certificated in any category, serial numbers 294, 299, 301 through 304, 306, 307, 310, 313, 314, 316 through 320, 322 through 331, 334 through 337 and 339.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Some occurrences have been reported where life rafts were difficult to remove from inside divan compartment. Investigations revealed that:

—Life raft was incorrectly stowed, with deployment straps inboard;

—Life raft had not been repacked to specified dimensions.

The purpose of this Airworthiness Directive (AD) is to verify that all life rafts are stowed correctly with deployment straps outboard, and are repacked to specified dimensions.

Corrective actions include correctly reinstalling an incorrectly stowed life raft, installing a properly repacked life raft, and installing placards.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 10 flight cycles after the effective date of this AD: Verify that the life rafts are stowed correctly, with deployment straps outboard, in accordance with the instructions specified in Dassault Service Bulletin F50–480, dated December 5, 2006, and verify that the overall dimensions of the life raft hard pack do not exceed nominal values, as indicated in Part F50–480–1 of the service bulletin.

(i) If a life raft is found incorrectly stowed, before next flight, reinstall it in accordance with the instructions specified in Part F50–480–1 of the service bulletin.

(ii) If nominal values of the overall dimensions of the life raft hard pack are exceeded, within 3 months after the effective date of this AD, install a properly repacked life raft as instructed in Part F50–480–2 of the service bulletin.

Note 1: Notice that with no life raft aboard, local national operating regulations may not allow some extended overwater flights.

(2) Within 3 months after the effective date of this AD: Install placards on the sofa in accordance with the instructions specified in Part F50–480–2 of Dassault Service Bulletin F50–480, dated December 5, 2006.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2006–0366, dated December 11, 2006, and Dassault Service Bulletin F50–480, dated December 5, 2006, for related information.

Material Incorporated by Reference

(i) You must use Dassault Service Bulletin F50–480, dated December 5, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on February 20, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3818 Filed 3–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28431; Directorate Identifier 2007–CE–050–AD; Amendment 39–15405; AD 2008–05–11]

RIN 2120–AA64

Airworthiness Directives; Alexandria Aircraft, LLC Models 17–30, 17–31, 17–30A, 17–31A, and 17–31ATC Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) to supersede AD 76–23–03 R1, which applies to certain Alexandria Aircraft, LLC Models 17–30, 17–31, 17–30A, and 17–31A airplanes. AD 76–23–03 R1 currently requires you to inspect the muffler and tailpipe assemblies for cracks and inspect the exhaust assembly for freedom of movement at the ball joints. Since we issued AD 76–23–03–R1, we have received additional reports of in-flight exhaust system failures. Consequently, this AD reduces the exhaust system inspection interval; requires a more detailed inspection of the muffler; and requires replacement, reconditioning, or repair of the exhaust system if cracks or defects are found. This AD also requires P-lead rerouting. We are issuing this AD to detect and correct cracks in the exhaust system, which could result in heat damage to magneto electrical wiring and smoke in the cockpit. This failure could lead to loss of engine power and/or a fire in the engine compartment.

DATES: This AD becomes effective on April 8, 2008.

On April 8, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: For service information identified in this AD, contact Bellanca/Alexandria Aircraft LLC, 2504 Aga Drive, Alexandria, MN 56308; phone: (320) 763–4088; fax: (320) 763–4095; Internet: *http://www.bellanca-aircraft.com*.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is FAA–2007–28431; Directorate Identifier 2007–CE–050–AD.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–7870; fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Discussion

On August 24, 2007, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Alexandria Aircraft, LLC Models 17–30, 17–31, 17–30A, 17–31A, and 17–31ATC airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 31, 2007 (72 FR 50297, August 31, 2007). The NPRM proposed to supersede AD 76–23–03 R1 and would reduce the exhaust system inspection interval; require a more detailed inspection of the muffler; and require replacement, reconditioning, or repair of the exhaust system if cracks or defects are found. The NPRM also proposed to require P-lead rerouting.

The NPRM was a result of additional reports of in-flight exhaust system failures since AD 76–23–03 R1 was issued.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Remove the Models 17–31A and 17–31ATC Airplanes From the AD

Dewey D. Elsik and Randall L. Pittman request that the FAA remove the Models 17–31A and 17–31ATC airplanes from the AD and only have it apply to Models 17–30 and 17–30A airplanes. The commenters state that the exhaust system design is different based on turbo-normalization components and the Lycoming engine version. The commenters point out that this is why the accidents only affect the Models 17–30 and 17–30A airplanes.

The FAA acknowledges that there are variations in design. However, the type design data shows that the exhaust systems of the Models 17–31A and 17–30A are essentially identical, except for minor geometry variations to accommodate the different engine geometry. Both exhaust designs were assembled using internal welds where adequate inspection is not possible without disassembly. The Models 17–30, 17–30A, 17–31, and 17–31A should all be subject to the inspection requirements proposed in the NPRM. The Model 17–31TC is not part of the NPRM as written, and the Model 17–31ATC is exempt from the inspections because the exhaust systems of these models are significantly different and are not susceptible to the referenced failures. The Model 17–31ATC is included in the P-Lead rerouting requirement of the NPRM because its P-Lead configuration is essentially identical to that of the Model 17–30A. This requirement is in the NPRM to prevent loss of engine power and/or a fire in the engine compartment because both of its P-Leads are routed together to a common point through the firewall in close proximity to the exhaust system.

We are making no changes to the final rule AD action based on this comment.

Comment Issue No. 2: Only Apply the AD to Those Airplanes Included in the National Transportation Safety Board's (NTSB) Listing of Accidents

Dewey D. Elsik and Dave Taylor propose that the FAA remove the Models 17–30, 17–31A, and 17–31ATC airplanes from the AD because they cannot find an exhaust system failure for these airplanes included in the NTSB's listing of accidents.

We disagree with the idea of removing these airplanes from the AD because they do not show up in the NTSB's listing of accidents. An AD is issued when ''an unsafe condition exists in the product'' and ''the condition is likely to exist or develop in other products of the same type design.'' If the type design is the same or similar to another airplane's where there has been an accident, then the AD should also apply to those airplanes with the same or similar type design if the FAA determines there is an unsafe condition. It is not necessary to wait for an accident to issue an AD. The lack of failures on the referenced airplanes could also be attributed to the following:

- The Model 17–31A represents only 13 percent of the airplanes affected in the exhaust inspection requirement of the AD;
- The Model 17–31ATC represents only 14 percent of the airplanes affected by the P-Lead rerouting portion of the AD;
- This sampling is statistically too small to be used as an argument to exclude these models from the AD; and
- Service history shows that the Model 17–31A exhaust system experiences cracks and requires repairs no different than that of the Models 17–30 and 17–30A. We are making no changes to the final rule AD action based on this comment.

Comment Issue No. 3: Only the Exhaust Systems With V-clamps and Internal Welds Should Be Affected by the Increased Inspection Interval of 50 Hours TIS Instead of the 100 Hours TIS as Currently Required by AD 76–23–03 R1

Edward A. Connell requests that the FAA only require airplanes with exhaust systems with V-clamps and internal welds to inspect at intervals of 50 hours instead of the 100-hour intervals of AD 76–23–03 R1. Mr. Connell states that the AD is based on the original design of the exhaust system on the early Model 17–30A airplanes. This design uses a V-clamp to attach the tailpipe to the muffler, which

has been the primary location of the reported exhaust system failures. This design also uses internal welds extensively in its construction and is very difficult to inspect. Mr. Connell explains that many Model 17–30A exhaust systems have been either repaired or replaced through FAA-approved repair facilities with a newer design that replaces the V-clamp with a three-bolt clamp arrangement. This newer design also included external welds to replace the internal welds. These externally welded exhaust systems are much easier to inspect and do not require the disassembly specified in the service letter. Mr. Connell proposes that the NPRM be revised so that only the exhaust systems with the V-clamps and the internal welds are subject to the increased 50-hour inspection intervals.

The FAA partially agrees. We are not changing the applicability of the AD because the type design data shows all affected airplanes were manufactured with internal welds that can only be inspected through disassembly. In addition, although difficult to adjust, the V-clamp has not been identified as the root cause of the exhaust system failures. We acknowledge that airplanes with modified exhausts that are similar to the replacement parts configuration as presented in the service letter may provide an acceptable level of safety to exempt them from the increased inspection intervals of 50 hours TIS. Those owners/operators may apply for an alternative method of compliance (AMOC) using the procedures in 14 CFR 39.19 and the AD.

We are making no changes to the final rule AD action based on this comment.

Comment Issue No. 4: Apply the AD Only to the Model 17–30A

Ronald Quillen states that the unsafe condition is shown to exist or develop only on the Model 17–30A airplanes. The commenter bases this on the following observations:

- There have only been a total of eight NTSB-reported accidents relating to exhaust system and/or P-Lead failures, which represents less than 1 percent of the total airplanes produced and all failures occurred on Model 17–30A airplanes;
- Of these eight failures, only three occurred after the issuance of AD 76–23–03 R1 (effective November 7, 1986). Three additional accidents occurred in 1985, just prior to the effective date of AD 76–23–03 R1. There was one other accident in 1977 and the first was in October 1976, which prompted the original AD 76–23–03.
- The eight NTSB reports all apply to the early production years (prior to 1978–1979) of the Model 17–30A airplanes before the exhaust system was redesigned.
- There are no NTSB-reported failures for Model 17–30A airplanes manufactured after 1978–1979 or for any other affected airplane model.
- Failure of early year exhaust systems would direct gasses directly toward an electrical harness, which would exit a cannon connector parallel to the firewall and then be oriented inboard and downward.
- The later production year exhaust systems do not direct gasses directly toward the electrical harness as it exits the cannon connector perpendicular to the firewall and above the point of failure, thus the reason for no failures reported on these later production exhaust systems.
- Both the Lycoming-powered Model 17–31TC airplane (not included in the AD) and the Model 17–31ATC (not included in AD 76–23–03 R1, but included in the NPRM), have entirely different exhaust systems and do not have any ball joints shown to be prone to failure. Both models do not seem to have the unsafe condition, and it does not seem likely that the condition will exist or develop in the future.

The FAA partially agrees. We agree that design changes to exhaust systems have been many over the years. However, all designs have included internal welds where inspection is not possible without disassembly. Also there has not been an exhaust system design change to address the issues of the AD until the exhaust system design defined in the replacement parts of Bellanca/AALC Service Letter B–110. Previous service letters, AD 76–23–03 R1, and the NPRM all address one failure mode of the hanger/mount/support/muffler/tailpipe/ball joint/welds of all airplane models, except for the Models 17–31TC and 17–31ATC airplanes. As specified earlier, these latter models have internal welds, the Model 17–31TC is not part of the AD, and the Model 17-ATC is not affected by the inspection requirement in the AD. The type design of the P-Lead configuration of the 17–31ATC is the same as that of the accident airplanes, which is why this airplane model is included in the AD, but only in the P-Lead rerouting requirement. This design must be modified to separate leads where they penetrate the firewall so one heat source (whether from directed exhaust gasses or other source) does not melt the insulation on both leads and short them to ground, which could cause loss of engine power and/or a fire in the engine compartment. If owners/operators of Model 17–31ATC already have a separated P-Lead configuration and believe the AD should not apply to them, then they may apply for an AMOC following the procedures in 14 CFR 39.19 and this AD.

We are making no changes to the final rule AD action based on this comment.

Comment Issue No. 5: Exclude the Model 17–31ATC From the AD

Randall L. Pittman, Ronald J. Quillen, and Edwin A. Stephan request that the FAA exclude the Model 17–31ATC from the AD based on:

1. Exhaust design or maintenance deficiencies related to P-Lead failures in Models 17–31ATC or 17–31TC are non-existent and not likely to develop. Since the Model 17–31TC is not included in the NPRM and both models share the same exhaust system, this justifies removing the Model 17–31ATC from the AD.

2. There has not been a single NTSB accident report for an exhaust or P-Lead failure on these airplanes.

3. The exhaust system design of the Model 17–31ATC is different than that of the Model 17–30 airplanes. It does not share the same geometry or construction details, which could lead to P-Lead failure as in the Model 17–30 airplanes.

4. There is no design basis of commonality to require the AD to affect the Model 17–31ATC airplanes. The P-Lead modification instructions specified in the NPRM do not apply to the Model 17–31ATC airplanes; the instructions are unique and specific for the Models 17–30 and 17–30A airplanes. Thus, an adequate comment period has not been provided for the Model 17–31ATC airplanes because no appropriate reference material and instructions have been provided in the NPRM.

The FAA does not concur with exempting the Model 17–31 ATC airplanes from the AD, as follows:

1. The type design for the Model 17–31ATC airplanes does not have the same P-Lead configuration as the Model 17–31TC airplanes. The P-Lead configuration of the Model 17–31ATC is basically the same as the accident airplanes. The NTSB reports show that the loss of engine power and/or a fire in the engine compartment occurred when the exhaust system failed and allowed hot exhaust gas to melt the insulation on the P-Lead wires, which caused them to short in close proximity to the exhaust system. The P-Lead rerouting portion of the AD would correct this problem by separating the P-Leads and relocating them away from the exhaust system. Therefore, the Model 17–31ATC will

remain as part of the Applicability of the AD.

2. The Model 17–31ATC airplanes have not been reported with a failure similar to the accident airplanes. This is most likely due to the small population that the Model 17–31ATC airplanes represent. The Models 17–31 and 17–31A airplanes also represent a small fleet size. The fleet size for the Models 17–31, 17–31A, and 17–31ATC airplanes are 1 percent, 12 percent, and 11 percent, respectively. The sampling is statistically not large enough to be used as criteria to exclude these airplanes from the AD. The similar P-Lead configuration design of the Model 17–30A that was involved in the NTSB-documented accidents justifies including all of these airplanes in the AD.

3. We agree that the exhaust system design of the Model 17–31ATC is different than the Model 17–30 airplanes. This is the reason why the Model 17–31ATC airplanes are not subject to the exhaust system inspections proposed in the NPRM. However, the type design for the P-Lead configuration for the Model 17–31ATC airplanes is basically the same as that of the accident airplanes, thus making the Model 17–31ATC airplanes subject to the proposed P-Lead rerouting requirement in the NPRM.

4. The Bellanca/AALC Service Kit SK1072 is intended to be used for all the airplanes specified in the NPRM, including the Model 17–31ATC airplanes. The procedures in the service information address the Teledyne-powered airplanes to illustrate details because they are most representative of the fleet. The service information includes notes in the instructions that extend to the other affected airplane models. As previously discussed, the Model 17–31TC is not part of the NPRM. Because the service information does apply to the Model 17–31ATC airplanes, there was adequate reference material available for comment.

We are making no changes to the final rule AD action based on this comment.

Comment Issue No. 6: Withdraw the NPRM

Ronald J. Quillen requests that the FAA withdraw the NPRM because the existing ADs are sufficient, and the accident data supports this. The commenter states that the type design for the Models 17–30, 17–31, 17–30A, and 17–31A airplane exhaust systems are identical (they were built at the factory during the same production time frame) except for minor differences due to geometry variations. All were manufactured with internal welds. This includes all assembled using internal welds. The commenter sets up time frames with the accidents to show that the current ADs are working, and the events do not justify the AD.

The commenter also believes the FAA should withdraw the NPRM because of inaccurate statements made in both the NRPM and Airworthiness Concern Sheet (ACS) as part of the Small Airplane Directorate's Airworthiness Concern Process. These are as follows:

- *In the NPRM:* It states that AD 76–23–03 R1 ''applies to certain Alexandria Aircraft, LLC (Bellanca) Models 17–30, 17–31, 17–31A, and 17–31ATC airplanes.'' The commenter states that AD 76–23–03 R1 did not apply to Model 17–31ATC airplanes.
- *In the ACS:* It states ''Seven other similar accidents occurred since 1986 when AD 76–23–03 was amended to solve this problem.'' The commenter states that actually five accidents occurred prior to this AD, three in 1985 and two prior to that date with only three accidents following the issuance of the AD. Of the three that followed the AD, they were separated by 8 and 11 years respectively, which is clearly a dramatic reduction in the reported accident rate and frequency and likely directly attributable to the fact that the current AD is working. Of these accident airplanes, all were pre-1985 production Model 17–30A airplanes and shared the weld defect design of the exhaust systems and P-Lead failure likely due to routing directly aft of the exhaust system failure point.

Edwin A. Stephan requests the FAA withdraw the NPRM because the instructions for commenting on the AD were confusing. The NPRM directed the commenters to the Docket Management System (DMS) at *http://dms.dot.gov*, and the DMS directed the commenters to the Federal Document Management System (FDMS) at *http://regulations.gov*. The commenter believes this discouraged comments on the NPRM and may have reduced or prevented comments.

We disagree with withdrawing the NPRM. The common design of all of these airplanes that justifies the need for further AD action is the internal welds, which require exhaust system disassembly to adequately inspect. Service data also shows that the exhaust system should be inspected at 50-hour TIS intervals or 12-month intervals, whichever occurs first. This is based on failures occurring between 50 hours TIS and the current 100-hour TIS interval required by AD 76–23–03 R1. Because all but 38 airplanes were built before 1985, the potential for more exhaust system failures exists if further AD action is not taken because the airplanes will be approaching 40 years of service with many having the original factory-installed exhaust system. Repair or replacement of the exhaust system would only be required by the AD if cracks or leaks were found.

The FAA agrees that the Model 17–31ATC was not part of AD 76–23–03 R1. However, it does have the same P-Lead configuration and should be included in the AD. Inadvertently referencing this model in AD 76–23–03 R1 does not mean there is no unsafe condition and thus does not justify withdrawing the NPRM.

As far as the data in the ACS, the data, no matter how it is analyzed, will show that the airplanes affected by the exhaust system inspection all have internal welds and, as discussed previously, the service data also shows that the exhaust system should be inspected at 50-hour TIS intervals or 12-month intervals, whichever occurs first. This is based on failures occurring between 50 hours TIS and the current 100-hour TIS interval required by AD 76–23–03 R1. And as discussed above, a large majority of the airplanes will be approaching 40 years of service with many having the original factory-installed exhaust system.

The FAA agrees that there were issues with the DMS and FDMS. The NPRM was issued when the electronic docket was DMS, but during the comment period the FAA transitioned to the FDMS as mandated by Congress that all federal agencies begin using the FDMS. However, posting of comments was on DMS for part of the comment period and on FDMS for the other. All DMS comments could be reviewed on both the DMS and FDMS. All comments are currently housed in FDMS, and they are extensive. We evaluated all comments. Because there were comments posted in both DMS and FDMS, we believe that the public had adequate time and methods to comment on the NPRM.

We are making no changes to the final rule AD action based on these comments.

Comment Issue No. 7: Exclude From the Inspection Portion of the AD Those Airplanes With Exhaust Systems Modified With Parts Equivalent to Those in Bellanca Service Letter B–110

Dave Taylor states that those airplanes that incorporate exhaust systems modified with replacement parts that are equivalent to those in Bellanca/AALC Service Letter B–110 should not be affected by the exhaust system inspection portion of the AD. The commenter goes on to state that the AD is too burdensome for owners and

micromanages the risk that should be placed on airplane owners since the exhaust systems are already inspected on an annual basis through normal maintenance practices.

We agree that those airplanes that incorporate exhaust systems modified with replacement parts that are equivalent to those in Bellanca/AALC Service Letter B–110 should be exempt from the exhaust system inspection portion of the AD. Any owner/operator who believes he/she has such parts can apply to the FAA for an AMOC following the procedures in 14 CFR 39.19 and the AD.

As far as the AD being too burdensome on airplane owners when the exhaust system is inspected annually, we disagree because the service history shows that the current maintenance procedures and AD 76–23–03 R1 are not fully detecting the cracks and leaks before failure. Service difficulty information, factory Service Alerts, or other recommendations are vehicles to communicate information, but they are not required by law. An AD is a method the FAA has to require actions on all airplanes to address a known unsafe condition.

We are making no changes to the final rule AD action based on this comment.

Comment Issue No. 8: Revise the AD Instead of Supersede the AD

Ronald J. Quillin proposes that the FAA revise the existing AD 76–23–03 R1 to the R2 level rather than supersede it and give it an entirely new AD number. The commenter states that this would be less confusing since AD 76–23–03 R1 already requires inspection techniques for the detection and correction of cracks in the exhaust system of affected models.

Since the NPRM provides additional inspection techniques and introduces the P-Lead rerouting, we must supersede the AD because it requires additional actions on the public. Paragraph 33, page 27, of the *Airworthiness Directives Manual, FAA–IR–M–8040.1A (FAA–AIR–M–8040.1), dated January 23, 2007*, includes the following: ''if the new AD imposes new requirements, it must be issued as a supersedure.''

We are making no changes to the final rule AD action based on this comment.

Comment Issue No. 9: Revise the Cost of Compliance To Adequately Show the Number of Airplanes on the U.S. Registry

Ronald J. Quillin states that the number of airplanes affected by both the inspection and P-Lead rerouting requirements are incorrect. The commenter states that, according to his research, there are 1,041 airplanes on the U.S. registry that would be affected by the AD; and that 921 airplanes on the U.S. registry would be affected by the exhaust system inspections and 854 airplanes in the U.S. registry would be affected by the P-Lead rerouting. The commenter states that this would downwardly affect the total cost on the fleet.

We agree. We based our numbers on production airplanes. We will revise the Costs of Compliance section to reflect the numbers provided in the comment.

Conclusion

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

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

Costs of Compliance

We estimate that this AD affects 1,041 airplanes in the U.S. registry.

We estimate the inspection of the exhaust system affects 921 airplanes with the following costs:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 work-hours × $80 per hour = $320	N/A	$320	$294,720

We estimate the P-Lead rerouting affects 854 airplanes with the following costs:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 work-hours × $80 per hour = $320	$500	$820	$700,280

We estimate the following costs to replace the exhaust system based on the results of the inspection. The estimate is based on updating the entire exhaust system to the current production exhaust system. This AD allows other means to do the required repairs/replacement, which could cost less. We have no way of determining the number of airplanes that may need this repair/replacement:

Labor cost	Parts cost	Total cost per airplane
8 work-hours × $80 per hour = $640	$4,000	$4,640

The estimated costs represented in the above actions include the costs associated with AD 76–23–03 R1 and the costs of this AD. The added cost impact this AD imposes upon an owner/operator over that already required by

AD 76–23–03 R1 is a more detailed inspection (which requires more work-hours to do) and the P-Lead rerouting on certain models.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2007–28431; Directorate Identifier 2007–CE–050–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 76–23–03 R1, Amendment 39–5454, and adding the following new AD:

2008–05–11 Alexandria Aircraft, LLC: Amendment 39–15405; Docket No. FAA–2007–28431; Directorate Identifier 2007–CE–050–AD.

Effective Date

(a) This AD becomes effective on April 8, 2008.

Affected ADs

(b) This AD supersedes AD 76–23–03 R1, Amendment 39–5454.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
17–30	All serial numbers.
17–30A	30263 through 301030.
17–31	All serial numbers.
17–31A	All serial numbers.
17–31ATC	All serial numbers.

Unsafe Condition

(d) This AD results from several accidents caused by exhaust system failures. We are issuing this AD to detect and correct cracks in the exhaust system, which could result in heat damage to magneto electrical wiring and smoke in the cockpit. This failure could lead to loss of engine power and/or a fire in the engine compartment.

Compliance

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

Actions	Compliance	Procedures
(1) For aircraft models and serial numbers listed below, inspect the exhaust system for cracks or other defects such as excessive wear: (i) Model 17–30, all serial numbers; (ii) Model 17–30A, serial numbers 30263 through 301030; (iii) Model 17–31, all serial numbers; and (iv) Model 17–31A, all serial numbers.	Initially within the next 12 months after April 8, 2008 (the effective date of this AD) or within 25 hours time-in-service (TIS) after April 8, 2008 (the effective date of this AD), whichever occurs first. Then repetitively thereafter at intervals not to exceed 12 months or 50 hours TIS, whichever occurs first. Accomplishment of the actions in paragraph (e)(2)(i) or (e)(2)(ii) of this AD terminates the recurring inspections required in this paragraph for the replaced/reconditioned exhaust system (left and/or right side).	Follow Bellanca/Alexandria Aircraft, LLC Service Letter B–110, dated May 8, 2007.

Actions	Compliance	Procedures
(2) Repair or replace the exhaust system using any of the options listed below: (i) Option #1—replace the entire defective left and/or right muffler and tailpipe assembly(ies) with new parts as specified in Bellanca/Alexandria Aircraft, LLC Service Letter B–110, dated May 8, 2007; (ii) Option #2—replace the entire defective left and/or right muffler and tailpipe assembly(ies) with parts reconditioned to the new parts as specified in Bellanca/Alexandria Aircraft, LLC Service Letter B–110, dated May 8, 2007; or (iii) Option #3—recondition or repair the defective left and/or right muffler and tailpipe assembly(ies) to their original configuration using FAA-approved methods and materials.	Before further flight after any inspection required in paragraph (e)(1) of this AD where a crack or other defect is found. The actions in paragraph (e)(2)(i) or (e)(2)(ii) of this AD terminate the recurring inspections required in paragraph (e)(1) of this AD for the replaced/reconditioned exhaust system (left and/or right side).	Follow Bellanca/Alexandria Aircraft, LLC Service Letter B–110, dated May 8, 2007.
(3) For aircraft models and serial numbers listed below that do not have Bellanca/Alexandria Aircraft, LLC Service Kit 1067: Rerouting Right Magneto ''P'' Lead installed, reroute the magneto ''P'' leads: (i) Model 17–30A, serial numbers 30263 through 30998; (ii) Model 17–31A, all serial numbers; and (iii) Model 17–31ATC, all serial numbers.	Within the next 12 months after April 8, 2008 (the effective date of this AD) or within 100 hours TIS after April 8, 2008 (the effective date of this AD), whichever occurs first.	Follow Bellanca/Alexandria Aircraft, LLC Service Kit 1072 instructions located on drawing SK 1072, dated April 2, 2007, as referenced in Bellanca/Alexandria Aircraft, LLC Service Letter B–110, dated May 8, 2007.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Chicago Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Michael Downs, Aerospace Engineer, ACE–118C, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; phone: (847) 294–7870; fax: (847) 294–7834. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(g) You must use Bellanca/Alexandria Aircraft, LLC Service Letter B–110, dated May 8, 2007; and Alexandria Aircraft, LLC Service Kit 1072 instructions located on drawing SK 1072, dated April 2, 2007, as referenced in Bellanca/Alexandria Aircraft, LLC Service Letter B–110, dated May 8, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bellanca/Alexandria Aircraft, LLC, 2504 Aga Drive, Alexandria, MN 56308; phone: (320) 763–4088; fax: (320) 763–4095; Internet: *http://www.bellanca-aircraft.com*.

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

Issued in Kansas City, Missouri, on February 25, 2008.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3899 Filed 3–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30596; Amdt. No. 3259]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes in the National Airspace System, such as the commissioning of new navigational facilities, adding of new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 4, 2008. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 4, 2008.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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*.

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual

SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in an FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on Febuary 22, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
02/14/08	KY	DANVILLE	STUART POWELL FIELD	8/4747	LOC/DME RWY 30, AMDT 1.
02/15/08	NY	NEW YORK	LA GUARDIA	8/5114	RNAV (GPS) RWY 13, ORIG.
02/15/08	PA	PHILADELPHIA	PHILADELPHIA INTL	8/5119	ILS OR LOC/DME RWY 27R, AMDT 10A.
02/15/08	PA	PHILADELPHIA	PHILADELPHIA INTL	8/5120	ILS OR LOC RWY 9L, AMDT 4B.
02/15/08	SD	LEMMON	LEMMON MUNI	8/5106	GPS RWY 29, ORIG.
01/11/08	AK	JUNEAU	JUNEAU INTL	8/0472	LDA X RWY 8, AMDT 11A.
02/07/08	MN	ROCHESTER	ROCHESTER INTERNATIONAL.	8/3803	ILS OR LOC RWY 31, AMDT 21.
02/07/08	MN	ROCHESTER	ROCHESTER INTERNATIONAL.	8/3804	ILS OR LOC RWY 13, AMDT 7.

[FR Doc. E8–4022 Filed 3–3–08; 8:45 am]
BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0534; FRL–8536–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Merck and Co., Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania (Pennsylvania or the Commonwealth). This revision establishes and requires reasonably available control technology (RACT) for a major source of volatile organic compound (VOC) and nitrogen oxide (NO_X) pursuant to the Pennsylvania's SIP-approved generic RACT regulations. The VOC and NO_X major source is Merck and Co., Inc. (Merck) located in Northumberland County, Pennsylvania. EPA is approving this revision in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on April 3, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0534. All documents in the docket are listed in the *http://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 *http://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 Environmental 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 January 4, 2008 (73 FR 836), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth. The NPR proposed approval of the VOC and NO_X RACT determinations for Merck. The formal SIP revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) on June 13, 2007.

II. Summary of SIP Revision

Merck is a chemical process facility and is a major source of VOC and NO_X emissions located in Northumberland County, Pennsylvania. The Commonwealth's submittal consists of an operating permit (OP–49–0007B) that imposes VOC and NO_X RACT requirements for Merck. PADEP established and imposed these RACT requirements in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to Merck. In accordance with its SIP-approved generic RACT rule, the Commonwealth has also imposed recordkeeping, monitoring, and testing requirements on Merck sufficient to determine compliance with the applicable RACT determinations. Other requirements to the VOC and NO_X RACT determinations and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP on June 13, 2007. The SIP revisions establish and require VOC and NO_X RACT pursuant to the Commonwealth's SIP-approved generic RACT regulations for Merck and Co., Inc. (OP–49–0007B) located in Northumberland County, Pennsylvania.

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 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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for Merck.

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 *May 5, 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 VOC and NO_X RACT determinations for Merck and Co., Inc. located in Northumberland County, Pennsylvania, 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: February 21, 2008.

Donald S. Welsh,

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 NN—Pennsylvania

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

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) * * *

Name of source	County	Permit No.	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*	*
Merck and Co., Inc	Northumberland	OP–49–0007B	05/16/01	03/04/08 [Insert page number where the document begins].	52.2020(d)(1)(v)

* * * * *

[FR Doc. E8–4038 Filed 3–3–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–1180; FRL–8535–9]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the state of Iowa to demonstrate that the state meets the requirements of Section 110(a)(1) and (2) of the Clean Air Act (CAA). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA and is commonly referred to as an infrastructure SIP. In 1997, EPA promulgated the 8-hour ozone primary and secondary NAAQS. A revision to Iowa's SIP detailing how the state plans to ensure that the revised ozone standard is implemented, enforced, and maintained in Iowa was submitted on June 15, 2007. The submittal addressed all the elements of the October 2, 2007, guidance issued by the Office of Air Quality and Planning Standards with regard to infrastructure SIPs.

DATES: This direct final rule will be effective May 5, 2008, without further notice, unless EPA receives adverse comment by April 3, 2008. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–1180, by one of the following methods:

1. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. *E-mail: Hamilton.heather@epa.gov*.

3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2007–1180. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail

information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m. excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a Section 110(a)(1) and (2) SIP?

Section 110(a)(1) and (2) of the CAA requires, in part, that states submit to EPA plans to implement, maintain and enforce each of the NAAQS promulgated by EPA. EPA interprets this provision to require states to address basic SIP requirements including emission inventories, monitoring, and modeling to assure attainment and maintenance of the standards. By statute, SIPs meeting the requirements of Section 110(a)(1) and (2) are to be submitted by States within three years after promulgation of a new or revised standard. These SIPs are commonly called infrastructure SIPs.

In 1997, EPA promulgated the 8-hour ozone primary and secondary NAAQS. Intervening litigation over the 1997 standards caused a delay in SIP submittals. The State of Iowa's infrastructure SIP was received by EPA Region 7 on June 15, 2007, and the SIP was determined to be complete on November 16, 2007.

What elements are required under Section 110(a)(1) and (2)?

On October 2, 2007, EPA issued guidance for addressing SIP ''infrastructure'' elements required under Section 110(a)(1) and (2) for the 1997 ozone and $PM_{2.5}$ NAAQS. The 14 elements required to be addressed are as follows: (1) Emission limits and other control measures; (2) ambient air quality monitoring/data system; (3) program for enforcement of control measures; (4) interstate transport; (5) adequate resources; (6) stationary source monitoring system; (7) emergency power; (8) future SIP revisions; (9) consultation with government officials; (10) public notification; (11) prevention of significant deterioration (PSD) and visibility protection; (12) air quality and monitoring data; (13) permitting fees, and (14) consultation/participation by affected local entities.

How has the state addressed the elements of the Section 110(a)(1) and (2) ''infrastructure'' provisions?

Iowa Department of Natural Resources' (IDNR) SIP submittal addresses the provisions of Section 110(a)(1) and (2) as described below.

Emission limits and other control measures: Iowa provided an overview of the provisions of the Iowa Code (the state enabling statute) and the Iowa Administrative Code relevant to air quality control regulations. Section 455B.133 of the Iowa Code generally authorizes the Environmental Protection Commission to adopt rules for the control of air pollution, including those necessary to obtain EPA approval under Section 110 of the CAA. The submittal also includes references to rules adopted by Iowa to control air pollution, including ozone precursors. EPA believes these provisions are adequate to protect the 8-hour ozone standard in the state.

Ambient air quality monitoring/data system: IDNR submitted information with regard to the organization and structure of the monitoring program that includes the local air quality programs and the University of Iowa Hygienic Laboratory. These entities collect air monitoring data, quality assure the results and report the data. The submittal includes maps indicating Iowa's ozone monitor locations and design values for 2001–2003, 2002–2004, and 2003–2005. In addition, ozone summary reports from the Air Quality System from 1998–2006 is included as well as a table of counties in Iowa and their designations which are all unclassifiable/attainment.

Program for enforcement of control measures including review of proposed new sources: IDNR's SIP submittal includes a description of the compliance activities of the state's regional field offices and the two local agencies (Linn and Polk Counties). It also includes a description of the state statutory authority to enforce regulations relating to attainment and maintenance of the 8-hour ozone standard. The SIP submittal also describes how the state's construction permits program reviews proposed new major and minor sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for compliance with the 8-hour ozone NAAQS.

Interstate transport: Iowa included its SIP revision addressing the interstate transport provisions in Section 110(a)(2)(D)(i) as an attachment to the infrastructure SIP. EPA approved the transport SIP for Iowa on March 8, 2007 (72 FR 10380). Therefore, the infrastructure SIP rulemaking covered by today's action does not include the transport SIP.

Adequate resources: IDNR's submittal discusses ''Program Development'' which is the group within IDNR responsible for adopting air quality rules, revising SIPs, developing and tracking the budget, establishing the Title V fees, and other planning needs. Detailed information with regard to rule development is included as an appendix to the submittal. The Program Development section also coordinates agreements with local air pollution control programs (Linn and Polk Counties), and works closely with the Small Business Environmental Liaison.

Stationary source monitoring system: The SIP submission describes how the major source and minor source emission inventory programs collect emission data throughout the state and ensure the quality of data. These programs generate data for ozone precursors (VOCs and NO_X) and summarize emissions from point, area, mobile, and biogenic (natural) sources. IDNR uses this data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements.

Emergency power: IDNR provided an overview of the Iowa Administrative Code and refers to the chapter that identifies air pollution emergency episodes and preplanned abatement strategies. The episode criteria specified in this chapter for ozone are based on a 1-hour average ozone level at a monitoring site. These criteria have previously been approved by EPA as adequate to address ozone emergency episodes.

Future SIP revisions: As previously discussed, IDNR's Program Development section is the area of IDNR responsible for adopting air quality rules and revising SIPs as needed to protect the NAAQS. Iowa has the ability and authority to respond to calls for SIP revisions. Detailed information with regard to rule development is included as an appendix to the SIP submittal.

Consultation with government officials: The submission describes how the Program Development section is responsible for consultation with government officials whose jurisdictions might be affected by SIP development activities.

Public notification: The state's emergency episode provisions, discussed above, provide for notification to the public when the NAAQS, including the ozone NAAQS, are exceeded.

PSD and visibility protection: This element is addressed in an appendix to the submittal which addresses the requirements of the 110(a)(2)(D)(i) SIP that was approved in the **Federal Register** on March 8, 2007. In that submission, Iowa demonstrated its authority to regulate new and modified sources of ozone precursors (VOCs and NO_X) to assist in the protection of air quality in Iowa and in other states.

Air quality and modeling/data: Iowa has authority pursuant to Section 455B.133 to conduct air quality modeling and report the results of such modeling to EPA. Iowa's submission also shows that ambient ozone monitoring is used, in conjunction with pre- and post-construction ambient air monitoring, to track local and regional scale changes in ozone concentrations.

Permitting fees: The SIP revision addresses the review of construction permits as previously discussed. Permitting fees are collected through the state's Title V fees program.

Consultation/participation by affected local entities: The Program Development section coordinates with local governments affected by the SIP. Iowa's submission also includes a description of the public participation process for SIP development as described previously.

What action is EPA taking?

As described above, IDNR has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the revised ozone standard is implemented, enforced, and maintained in Iowa. It should be noted that Iowa is currently in attainment with the 8-hour ozone NAAQS.

We are processing this action as a direct final action because we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule

cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *May 5, 2008.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 15, 2008.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Q—Iowa

■ 2. In § 52.820 table (e) is amended by adding an entry in numerical order to read as follows:

§ 52.820 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IOWA NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(38) CAA 110(a)(1) and (2)—Ozone Infrastructure SIP.	Statewide	6/15/07	3/04/08 [*insert FR page number where the document begins*].	

[FR Doc. E8–4042 Filed 3–3–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[EPA–R03–OAR–2007–0606; FRL–8536–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Allentown-Bethlehem-Easton 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 Allentown-Bethlehem-Easton Ozone Nonattainment Area (or also referred to here as the Allentown Area, or simply the Area) be redesignated as attainment for the 8-hour ozone ambient air quality standard (NAAQS). The Allentown-Bethlehem-Easton Area is composed of Carbon, Lehigh, and Northampton Counties. EPA is approving the ozone redesignation request for the Allentown Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for the Allentown Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is approving the 8-hour maintenance plan. PADEP also submitted a 2002 base year inventory for the Allentown Area, which EPA is approving. In addition, EPA is approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Allentown-Bethlehem-Easton Area maintenance plan for purposes of transportation conformity, and is approving those MVEBs. 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 April 3, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0606. All documents in the docket are listed in the *www.regulations.gov* website. 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 Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by e-mail at *rehn.brian@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 7, 2008 (73 FR 1162), 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 Allentown-Bethlehem-Easton 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 Area. The formal SIP revisions were submitted by PADEP on June 26, 2007, with technical correction SIP revision concerning emissions inventory data submitted on August 9, 2007. Other specific requirements of Pennsylvania's redesignation request and maintenance plan SIP revisions, and the rationale 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 D.C. 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 Act 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 26, 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 Allentown-Bethlehem-Easton Area has attained the 8-hour ozone standard. The final approval of this redesignation request will change the designation of the Area from nonattainment to attainment for the 8-hour ozone standard. EPA is approving the maintenance plan for the Allentown-Bethlehem-Easton Area submitted on June 26, 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 26, 2007 (as well as a technical correction SIP including omitted emissions inventory information submitted on August 9, 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 nitrogen oxides (NO_X) and volatile organic compounds (VOC) in the Allentown-Bethlehem-Easton Area for the 8-hour ozone maintenance plan are adequate and approved for conformity purposes. As a result of our finding, the Area must use the MVEBs from the submitted 8-hour ozone maintenance plan for future conformity determinations. There are two separate metropolitan planning organizations (MPOs) responsible for transportation planning within the Allentown-Bethlehem-Easton Area. They are the Lehigh Valley Transportation Study MPO (for Lehigh and Northampton Counties), and the Northeastern Pennsylvania Alliance (for Carbon County). The adequate and approved MVEBs for each MPO within the Allentown-Bethlehem-Easton Area are provided in the following tables:

ADEQUATE AND APPROVED MOTOR VEHICLE EMISSIONS BUDGETS FOR THE LEHIGH VALLEY TRANSPORTATION STUDY MPO (COVERING THE LEHIGH AND NORTHAMPTON COUNTIES PORTION OF THE ALLENTOWN-BETHLEHEM-EASTON AREA) (2009 & 2018)

[In tons per summer day (TPSD)]

Budget year	VOC	NO_X
2009	20.6	28.9
2018	12.4	12.4

ADEQUATE AND APPROVED MOTOR VEHICLE EMISSIONS BUDGETS FOR THE NORTHEASTERN PENNSYLVANIA ALLIANCE MPO (COVERING THE CARBON COUNTY PORTION OF THE ALLENTOWN-BETHLEHEM-EASTON AREA) (2009 & 2018)

[In tons per summer day (TPSD)]

Budget year	VOC	NO_X
2009	3.4	5.9
2018	2.3	3.0

The Allentown 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 May 5, 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 Allentown-Bethlehem-Easton Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year emission inventory, and the MVEBs identified in the maintenance plan, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: February 21, 2008.

Donald S. Welsh,

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 submittal date	EPA approval date	Additional explanation
*	*	*	*	*
8-Hour Ozone Maintenance Plan and 2002 Base Year Emissions Inventory.	Allentown-Bethlehem-Easton Area: Carbon, Lehigh, and Northampton, Counties.	06/26/07, 08/9/07	03/04/08 [Insert page number where the document begins].	Technical correction dated 08/9/07 addresses omitted emissions inventory information from 06/26/07 submittals.

* * * * *

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 the Allentown-Bethlehem-Easton, PA, Carbon County, Lehigh County, Northampton 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
* * * *	*	*		*
Allentown-Bethlehem-Easton, PA: Carbon County Lehigh County Northampton County	04/03/08	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. E8–4029 Filed 3–3–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0324; EPA–R03–OAR–2007–0476; EPA–R03–OAR–2007–0344; FRL–8536–6]

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 Erie, Youngstown, and Cambria 8-hour ozone nonattainment areas to attainment, maintenance plans, and 2002 base year inventories submitted by the Commonwealth of Pennsylvania.

DATES: *Effective Date:* March 4, 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 January 14, 2008 (73 FR 2162), we published a final rule correcting final rules for Erie and Youngstown Areas. On August 1, 2007 (72 FR 41905), we published a final rulemaking action announcing our approval and promulgation of Pennsylvania's redesignation of the Cambria 8-hour ozone nonattainment area to attainment and approval of the associated maintenance plan and 2002 base year inventory. In these documents, EPA inadvertently printed the incorrect categories of volatile organic compound (VOC) and nitrogen oxide (NO_X) in a table entitled ''Adequate and Approved Motor Vehicle Emission Budgets (MVEBs).'' This action corrects the tables in the final rulemaking actions correcting the categories of VOC and NO_X for the MVEBs for Erie, Youngstown, and Cambria Areas.

Corrections

(1) Erie County, Pennsylvania Ozone Nonattainment Area (Erie Area).

In rule document E8–277, on page 2162, the table is corrected as follows:

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

Budget year	VOC	NO_X
2009	6.9	16.1
2018	4.5	7.3

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

In rule document E8–277, on page 2163, the table is corrected as follows:

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

Budget year	VOC	NO_X
2009	4.5	11.6
2018	3.0	5.3

(3) Johnstown (Cambria County) Ozone Nonattainment Area (Cambria Area).

In rule document E7–14745, on page 41905, the table is corrected as follows:

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

Budget year	VOC	NO_X
2009	3.8	5.6
2018	2.3	2.7

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(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)(B).

Statutory and Executive Order Reviews

Under Executive Order (E.O.) 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 March 4, 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 Erie, Youngstown, and Cambria, Pennsylvania are not ''major rules'' as defined by 5 U.S.C. 804(2).

Dated: February 21, 2008.

Donald S. Welsh,

Regional Administrator, EPA Region III.

[FR Doc. E8–4036 Filed 3–3–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATION COMMISSION

47 CFR PART 0

[DA 08–307]

Freedom of Information Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission is modifying a section of the Commission's rules that implement the Freedom of Information Act (FOIA) Fee Schedule. This modification pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and the Commission's rules, unless such fees are restricted or waived. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

DATES: Effective March 4, 2008.

FOR FURTHER INFORMATION: Shoko B. Hair, Freedom of Information Act Public Liaison, Office of Performance Evaluation and Records Management, Room 1–A827, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1379 or via Internet at *shoko.hair@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission is modifying § 0.467(a) of the Commission's rules. This rule pertains to the charges for searching and reviewing records requested under the FOIA. The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidelines issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA Fee Schedule on the grade level of the employee who processes the request. Thus, the Fee Schedule was computed at a Step 5 of each grade level based on the General Schedule effective January 1987 (including 20 percent for personnel benefits). The Commission's rules provide that the Fee Schedule will be modified periodically to correspond with modifications in the rate of pay approved by Congress. *See* 47 CFR 0.467(a)(1) note.

In an Order adopted on February 21, 2008 and released on February 29, 2008 (DA 08–307), the Managing Director revised the schedule of fees set forth in 47 CFR 0.467 for the recovery of the full, allowable direct costs of searching for and reviewing agency records requested pursuant to the FOIA and the Commission's rules, 47 CFR 0.460 and 0.461. The revisions correspond to modifications in the rate of pay, which was approved by Congress.

These modifications to the Fee Schedule do not require notice and comment because they merely update the Fee Schedule to correspond to modifications in rates of pay, as required under the current rules. The Commission will not distribute copies of this Order pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the rules are a matter of agency organization, procedure, or practice that do not

substantially affect the rights or obligations of non-agency parties.

Accordingly, pursuant to the authority contained in § 0.231(b) of the Commission's rules, 47 CFR 0.231 (b), *it is hereby ordered,* that, effective on March 4, 2008, the Fee Schedule contained in § 0.467 of the Commission's rules, 47 CFR 0.467, is amended, as described herein.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

Anthony J. Dale,

Managing Director.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 0 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.467 is amended by revising the table following paragraph (a)(1) and its note, and by revising paragraph (a)(2) to read as follows:

§ 0.467 Search and review fees.

(a)(1) * * *

Grade	Hourly fee
GS–1	$13.43
GS–2	14.62
GS–3	16.48
GS–4	18.49
GS–5	20.69
GS–6	23.06
GS–7	25.63
GS–8	28.38
GS–9	31.36
GS–10	34.52
GS–11	37.93
GS–12	45.47
GS–13	54.06
GS–14	63.89
GS–15	75.14

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a)(1) of this section were computed at Step 5 of each grade level based on the General Schedule effective January 2008 and include 20 percent for personnel benefits.

* * * * *

[FR Doc. E8–4129 Filed 3–3–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XF95

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (< 18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the A season apportionment of the 2008 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective February 28, 2008, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2008.

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

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

The A season apportionment of the 2008 Pacific cod TAC specified for vessels using jig gear in the BSAI is 1,281 metric tons (mt) as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008), for the period 1200 hrs, A.l.t., January 1, 2008, through 1200 hrs, A.l.t., April 30, 2008. See § 679.20(a)(7)(ii)(A), § 679.20(c)(3)(iii), and § 679.20(c)(5).

The Acting Administrator, Alaska Region, NMFS, has determined that jig vessels will not be able to harvest 1,200 mt of the A season apportionment of the 2008 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(1). Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 1,200 mt of Pacific cod from the A season jig gear apportionment to catcher vessels < 60 feet (18.3 m) LOA using pot or hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008) are revised as follows: 81 mt to the A season apportionment for vessels using jig gear and 4,233 mt to catcher vessels < 60 feet (18.3 m) LOA using pot or hook-and-line gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from jig vessels to catcher vessels < 60 feet (18.3 m) LOA using pot or hook-and-line gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 25, 2008.

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

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

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

Dated: February 27, 2008.

James P. Burgess

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

[FR Doc. 08–931 Filed 2–28–08; 1:48 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 070717344–8150–01; I.D. 041907A]

RIN 0648–AV44

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Weakfish Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to decrease the incidental catch allowance for weakfish caught in the Exclusive Economic Zone (EEZ) from 300 lb (135 kg) to no more than 150 lb (67 kg) per day or trip, whichever is longer in duration. The intent of this final rule is to modify regulations for the Atlantic coast stock of weakfish to be consistent with the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for weakfish, as set forth in the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act).

DATES: Effective April 3, 2008.

ADDRESSES: Copies of supporting documents are available from Chris Moore, Chief, Partnerships and Communications Division (SF8), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Suite 13317, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, 301–713–2334.

SUPPLEMENTARY INFORMATION:

Background

The Commission approved Addendum II to Amendment 4 of the Weakfish ISFMP in February 2007. Included in the management measures for this addendum was a reduction of the bycatch limit of weakfish in commercial fisheries from 300 lb (135 kg) to 150 lb (67 kg). These measures were developed in response to recent stock assessment data that suggested low weakfish biomass. While the reduced bycatch provision would not itself resolve the biomass issue, the Commission thought it a measure that might potentially slow the decline and have some positive effect. A more detailed discussion of the stock assessment and Commission action is set forth in the proposed rule for this action that was published in the **Federal Register** on June 14, 2007 (72 FR 32830).

NMFS analyzed the Commission's bycatch recommendation and similarly concluded that although the measure would not itself remedy the low weakfish biomass, the recommendation appeared reasonable, prudent and positive. The measure would also support the Commission'sWeakfish ISFMP and, importantly, would further the consistency between State and Federal weakfish regulations.

Comments and Responses

NMFS received no public comments on the proposed rule for this action.

Classification

This final rule is published under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act). Paragraphs (A) and (B) of section 804(b) (1) of the Atlantic Coastal Act, 16 U.S.C. 5103(a)-(b), authorizes the Secretary of Commerce to implement regulations in the EEZ in the absence of a Magnuson-Stevens Fishery Conservation Management Act (Magnuson-Stevens Act) fishery management plan. Such regulations must be compatible with the effective implementation of a Commission's ISFMP, and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries has determined that this action is compatible with the effective implementation of the Commission's ISFMP for weakfish and consistent with the national standards of the Magnuson-Stevens Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: February 28, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 697, is amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 1. The authority citation for 50 CFR part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

■ 2. In § 697.7, paragraph (a) (4) is revised to read as follows:

§ 697.7 Prohibitions.

(a) * * *

(4) Possess more than 150 lb (67 kg) of weakfish during any one day or trip, whichever islonger, in the EEZ when using a mesh size less than 3 1/4–inch (8.3 cm) square stretch mesh(as measured between the centers of opposite knots when stretched taut) or 3 3/4–inch (9.5cm) diamond stretch mesh for finfish trawls and 2 7/8–inch (7.3 cm) stretch mesh for gillnets.

* * * * *

[FR Doc. E8–4122 Filed 3–3–08; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 43
Tuesday, March 4, 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.

POSTAL SERVICE

39 CFR Part 111

Address Facing Standards for Presort Bundles on Pallets

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Effective September 14, 2008, the Postal Service is proposing to require mailers to place presort bundles on pallets with the addresses facing up.

DATES: We must receive your comments on or before April 3, 2008.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday. Do not submit comments via fax or e-mail.

FOR FURTHER INFORMATION CONTACT: Kevin Gunther at 202–268–7208.

SUPPLEMENTARY INFORMATION: The Postal Service is in the process of implementing technological changes through the deployment of the Flats Sequencing System (FSS) to automate delivery sequencing for flat-size mail. FSS can sort flat-size mailpieces into delivery sequence, increasing the efficiency of letter carriers by reducing time in sorting mail, and allowing delivery to begin earlier in the day. As we approach deployment of FSS, we are closely examining other technologies that will enhance our efforts to make the most of this investment and achieve the lowest combined costs for handling flat-size mail.

Placement of presort bundles on pallets with the address side up is needed for efficient processing in today's processing environment and, eventually, for the automated preparation and induction for FSS in the future.

USPS® standards in *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 705.8.5.7 and 705.8.5.9 require mailers preparing presort bundles to ensure that the delivery address information on the top mailpiece in each bundle is visible and readable by the naked eye. Standards in 705.8.5.8 require that bundles counter-stacked on pallets must have all addresses facing up. Logically, these standards should include the requirement for all presort bundles placed on pallets to be arranged with the addresses facing up. Placing bundles on pallets with the addresses facing up aids in validation of the contents and greatly enhances manual distribution of the bundles.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comment on the following proposed revisions to the DMM, incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633 and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

8.0 Preparing Pallets

* * * * *

8.5 General Preparation

* * * * *

8.5.6 Mail on Pallets

[Revise 8.5.6 to clarify that presort bundles on pallets must be face up by adding new item i as follows:]

* * * * *

i. All presort bundles on pallets must be placed with the addresses facing up.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–4078 Filed 3–3–08; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–1180; FRL–8535–8]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa to demonstrate that the state meets the requirements of Section 110(a)(1) and (2) of the Clean Air Act (CAA). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA and is commonly referred to as an infrastructure SIP. In 1997, EPA promulgated the 8-hour ozone primary and secondary NAAQS. A revision to Iowa's SIP detailing how the state plans to ensure that the revised ozone standard is implemented, enforced, and maintained in Iowa was submitted on June 15, 2007. The submittal addressed all the elements of the October 2, 2007, guidance issued by the Office of Air Quality and Planning Standards with respect to infrastructure SIPs.

DATES: Comments on this proposed action must be received in writing by April 3, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–1180 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: hamilton.heather@epa.gov.*

3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Deliver your comments to: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no relevant adverse comments on this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 15, 2008.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E8–4046 Filed 3–3–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1096; FRL–8536–9]

Approval and Promulgation of Implementation Plans; Illinois; Voluntary Nitrogen Oxides Controls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 1, 2001, the Illinois Environmental Protection Agency (Illinois EPA) submitted a request for EPA approval of regulations governing Nitrogen Oxides (NO_X) emission allowances granted for the implementation of voluntary control of NO_X emissions from sources not otherwise covered under other Illinois NO_X emission control regulations. Illinois requested incorporation of these voluntary NO_X emission control and NO_X emission allowance regulations into the Illinois State Implementation Plan (SIP). We are proposing to disapprove these regulations as an amendment of the Illinois SIP.

DATES: Comments must be received on or before April 3, 2008. Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–1096, by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2007–1096. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and should be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hardcopy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hardcopy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. It is recommended that you telephone Edward Doty, Environmental Scientist, at (312) 886–6057, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *doty.edward@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA (or U.S. EPA). This supplementary information section is arranged as follows:

I. What Action Are We Proposing for Illinois' Voluntary NO_X Emissions Reduction Rule and Requested SIP Revision?

Based on technical deficiencies and other technical concerns noted below for the Subpart X rule (35 Illinois Administrative Code (IAC), part 217, subpart X), we are proposing to disapprove the Subpart X rule as a revision to the Illinois SIP.

II. Background

On October 27, 1998 (63 FR 57356), EPA published a finding of significant contribution of ozone and ozone precursor transport for 22 States and the District of Columbia, and established state-specific NO_X emission budgets for these States (the final EPA rule is referred to as the NO_X SIP call). The October 27, 1998, final rule also established part 75 Continuous Emission Monitoring (CEM) requirements and part 96 NO_X emission trading program provisions under Volume 40 of the Code of Federal Regulations (CFR)

Illinois is included in the list of States covered by the NO_X SIP call, and as such, has been assigned a NO_X emissions budget for 2007 and subsequent years. Illinois, as required, has submitted a NO_X SIP with NO_X emission control regulations for Electrical Generating Units (EGUs), major non-EGU (industrial) boilers and turbines, and major cement kilns [1] to achieve the NO_X emission reduction needed to achieve the State's NO_X emission budget. The State also established regulations to implement a NO_X emissions cap-and-trade program and to provide for NO_X emissions credit trading in a National NO_X emissions trading program (the NO_X Budget Trading Program).

As part of its efforts to comply with the NO_X SIP call, Illinois has established procedures for NO_X emission allowance trading, and has established a set-aside of a portion of the State's total NO_X emission allowances for new sources. To allow for additional NO_X emissions growth and to provide additional emission allowances for existing sources and new sources, the State has established a rule to provide for NO_X emissions control and NO_X emission allowance generation through the voluntary implementation of emission controls on various NO_X sources. The rule covering the NO_X emissions control and the generation of NO_X emission credits for sources voluntarily seeking these NO_X emission credits is referred to by the State as the ''Subpart X Voluntary NO_X Emissions Reduction Program,'' (35 IAC part 217, subpart X), the subject rule of this proposed action and referred to here simply as the Subpart X rule. This rule was submitted to the EPA on May 1, 2001, for approval into the Illinois SIP.

III. Summary of the State's Submittal

The Subpart X rule covers the State's voluntary NO_X emission control and emissions credit program for sources not covered in the State's other NO_X emission control rules. Generally, sources that elect to be covered under the Subpart X rule are smaller NO_X sources with relatively low NO_X emissions during the ozone control period (May through September).

A. What are the components and requirements of the subject rule?

The Subpart X rule is divided into the following sections, whose requirements and provisions are summarized here.

Section 217.800 Purpose

The purpose of the Subpart X rule is to provide a method (procedure) and source requirements by which ''additional'' NO_X emission allowances may be generated for use (through the NO_X Budget Trading Program) by emission units subject to the requirements of 35 IAC part 217, subpart U (NO_X Control and Trading Program For Specified NO_X Generating Units) and subpart W (NO_X Trading Program For Electrical Generating Units). Note that Subpart X sources would not be opt-in sources covered under Subpart U or Subpart W, which must meet different requirements. Sources subject to the Subpart X rule would generate additional NO_X emission allowances through NO_X emission reductions not otherwise required in Illinois' NO_X control rules. See additional discussions of this issue below.

Section 217.805 Emission Unit Eligibility

This section allows any owner or operator of a stationary NO_X source (with the exceptions/exclusions noted below) to submit a proposal for voluntarily reducing NO_X emissions during the ozone control period. The emission units seeking the NO_X emission reduction credits must meet the following criteria:

(1) They must discharge their NO_X emissions through a stack(s);

(2) They must be fossil fuel-fired;

(3) They must not be subject to the requirements of 35 IAC part 217, subparts T, U, V, or W;

(4) They must not be retired units pursuant to 40 CFR 96.5;

(5) Their owners/operators must not have elected to make the units ''opt-in units'' pursuant to 35 IAC part 217, subpart W; and,

(6) they may not be stationary internal combustion engines that emit more than 1 ton of NO_X per day during the ozone control period.

Section 217.810 Participation Requirements

Any owner or operator of a NO_X emissions unit meeting the source requirements of 35 IAC section 217.805 that seeks voluntary NO_X emission reduction allowances under this rule must:

(1) Submit a NO_X emission reduction proposal that meets the requirements of section 217.835;

(2) Request a NO_X emissions cap for all NO_X emission units at the source facility that are not subject to the requirements of 217 IAC part 217, subpart U or subpart W and that are that are of the same or similar source type as the units for which voluntary emission reduction allowances are sought. The owner or operator, however, may submit a demonstration that any emission unit(s) should not be included in the NO_X emission cap;

[1] EPA approved Illinois' EGU NO_X rule on November 8, 2001 (66 FR 56454) and Illinois' NO_X rules for major non-EGU boilers and turbines and major cement kilns on November 8, 2001 (66 FR 56449).

(3) Obtain a source permit, or an amendment to an existing source permit, for the emission source (collection of applicable emission units to be included in the emissions cap), with Federally enforceable conditions, containing the commitments in the NO_X emissions reduction proposal and implementing the emissions cap by the later of May 1, 2003, or the date on which the reduction in NO_X emissions will commence. If the emission reduction allowance will be generated by ceasing operation of a unit, the owner or operator must withdraw the applicable source permit for the unit or must request a revision to the source permit to reflect the shutdown of the unit by the later of May 1, 2003, or the date specified in the NO_X emission reduction proposal;

(4) Submit an emission baseline determination for each emissions unit subject to the NO_X emissions cap in compliance with the requirements of 35 IAC section 217.820; and,

(5) Meet the following monitoring requirements:

(a) Each emission reduction unit must comply with the monitoring requirements in 35 IAC section 217.850;

(b) The emission measurements recorded and reported (to the State) will be used to determine compliance of the emission reduction unit with the emission limitation specified in the source's emission reduction proposal, with the source's emission reduction proposal, and with the Federally enforceable permit conditions for the unit; and,

(c) The emission measurements recorded and reported will be used to determine compliance by the source with the emissions cap set forth in the NO_X emission reduction proposal and with the Federally enforceable permit conditions for the source facility.

The owner or operator of the emission reduction source facility must submit an annual certification to the Illinois Environmental Protection Agency (Illinois EPA) that demonstrates that the source facility has complied with the NO_X emissions cap and that the source facility has complied with the requirements of 35 IAC section 217.850.

Section 217.815 NO_X Emission Reductions and the Subpart X NO_X Trading Budget

NO_X emission reductions credited under the Subpart X rule must be quantifiable, verifiable, and Federally enforceable, and must meet one or more of the following criteria:

(1) NO_X emissions from the emission reduction unit for any ozone control period beginning in 2003 or after the implementation of the voluntary NO_X emission control, whichever comes later, are lower than the unit's NO_X emissions baseline. The amount of NO_X emissions reduction must be determined in compliance with 35 IAC section 217.820, and the amount of creditable NO_X emission reduction must be determined to be in compliance with 35 IAC section 217.825;

(2) The emission reduction unit is permanently shut down after January 1, 1995, and the owner or operator requests a revision to the source operating permit to reflect the unit shutdown; or,

(3) During any ozone control period beginning in 2003, the emission reduction unit's control period (ozone control period) NO_X emission rate or hours of operation is reduced pursuant to Federally enforceable conditions in a source permit for such unit, resulting in an actual NO_X emission reduction relative to the unit's NO_X emissions baseline.

In the Federal NO_X Budget Trading Program, the EPA must adjust the State's trading portion of the State's NO_X emissions budget, as established in the NO_X SIP call, and create allowances for the creditable portion or the NO_X emissions reduction. NO_X emission allowances generated by Subpart X will be allocated to the recipient emission source facilities in accordance with Subpart X.

The Illinois EPA will submit an allocation to the EPA, and this allocation may be used for the purposes of demonstrating compliance with the requirements of 35 IAC part 217, subparts U and W. In other words, a source can trade allocated emission allowances to sources needing such emission allowances to meet the requirements of the State's NO_X SIP and EPA's NO_X SIP call and emissions trading program.

If EPA adjusts or fails to adjust the NO_X emissions trading budget for any applicable emission reduction unit, the Subpart X

Section 217.820 Baseline Emission Determination

An emission unit's NO_X emissions baseline will be determined by using one of the following procedures:

(1) By multiplying the unit's actual NO_X emissions during the 1995 calendar year by 5/12ths; or,

(2) If the NO_X emissions from the unit were not characterized in the annual emissions report for 1995, by determining the base-case amount included for such unit in EPA's NO_X SIP call emissions inventory, as specified in the ''Technical Support Document for Illinois Statewide NO_X Budget'' (63 FR 17349).

If the NO_X baseline emissions for the 1995 ozone control period cannot be determined by either of the above methods, the emissions baseline will be determined based on the average emissions rate multiplied by the average number of hours of operation from two of the three ozone control periods, as selected by the emission reduction source owner/operator, prior to the year the emission reduction proposal is effective. The NO_X emission rate and hours of operation shall be determined based on the source unit's reported NO_X emission rate and hours of operation in the most recent annual emissions reports for the source unit.

Section 217.825 Calculation of Creditable NO_X Emission Reductions

The gross amount of ozone control period actual NO_X emission reductions will be determined pursuant to Section 217.820 (discussed above). Eighty percent of the actual NO_X emissions reduction achieved will be ''creditable.'' Twenty percent of the actual NO_X emission reduction will be retired (non-creditable) for the benefit of air quality.

Section 217.830 Limitations on NO_X Emission Reductions

Each NO_X emission allowance issued is a limited authorization to emit one (1) ton of NO_X in accordance with the Federal NO_X Trading Program as set forth in 35 IAC part 217, subpart U. Either the EPA or the State has the authority to terminate or limit the issuance of such an emission allowance. Such an emission allowance does not constitute a property right for the source facility.

Section 217.835 NO_X Emission Reduction Proposal

The NO_X emission reduction proposal, to be filed by the owner or operator of the emission reduction unit must include the following in the emission reduction proposal:

(1) Information identifying each NO_X emissions unit at the source facility and the baseline NO_X emissions for each unit subject to the NO_X emissions cap;

(2) Information identifying each emission reduction unit for which the emission reductions have been or will be achieved;

(3) An explanation of the methods used to achieve the NO_X emission reductions;

(4) Documentation of the NO_X emission reductions, including supporting calculations and input data;

(5) Identification of the emission units subject to the NO_X emissions cap, and,

if all like-kind or same-type emission units are not to be included in the emissions cap, an explanation of how the owner/operator will ensure that production shifting will not occur to interfere with the emission reductions at the capped units;

(6) The ozone control period NO_X emission cap to be achieved by the source facility, including the baseline NO_X emissions for each emission reduction unit and the NO_X emission reduction for each emission reduction unit;

(7) The name and address of the owner or operator of each NO_X emission unit to which the NO_X emission allowances will be allocated, the subpart of 35 IAC part 217 to which each NO_X emission unit is subject, and the account number (NO_X trading account number) of the account representative for each such unit; and,

(8) Certification that the emission reductions specified in the proposal have been or will be achieved.

The owner or operator of an emission reduction unit must notify the Illinois EPA in writing within 30 days of any event or circumstance that makes the NO_X emission reduction proposal incorrect or incomplete.

The owner or operator of a source facility with an approved emission reduction proposal may request to withdraw the emission reduction proposal and to cease the creation of NO_X emission reduction allowances, and must comply with the following:

(1) Submit to the Illinois EPA a written request to withdraw from participation and to withdraw or revise the applicable source permit effective as of a specified date between (and not including) September 30 and May 1 (outside of the ozone control period). This submission requesting to withdraw must be made no later than 90 days prior to the requested effective date of the withdrawal;

(2) Submit to the Illinois EPA an annual compliance certification report for the control period immediately before the withdrawal is to be effective;

(3) The emission reduction source that withdraws from the requirements of Subpart X must comply with all requirements under its approved emission reduction proposal and Federally enforceable source permit for all years during which the emission reduction source is in the program, even if such requirements arise or must be complied with after the withdrawal takes effect;

(4) The effective date of the withdrawal will be specified by the State and will be prior to May 1 or after September 30 (the source withdrawal will not be made effective during an ozone control period);

(5) If the State denies the request to withdraw, the owner or operator of the affected source may submit another request to withdraw in accordance with subsections (a) and (b) of 35 IAC section 217.835; and,

(6) Upon successful withdrawal from the program (from the voluntary emission reduction program and from the NO_X trading program), the source facility shall no longer be subject to the requirements of Subpart X.

Section 217.840 Agency Action

The Illinois EPA will notify the owner/operator of an affected source facility in writing of its decision with respect to the NO_X reduction proposal within 90 days after receipt of the proposal. The NO_X emissions reduction proposal will not be effective until:

(1) After the owner/operator of the emission reduction unit has obtained a source permit with Federally enforceable conditions addressing the requirements of Subpart X; or,

(2) If the NO_X emission reductions are being obtained by the shutdown of a unit, the owner/operator has either obtained a source permit with Federally enforceable conditions addressing the requirements of Subpart X or withdrawn the applicable source permit and the Illinois EPA has provided the EPA with a copy of the proposal and notice of Illinois EPA's proposed approval of the emission reduction proposal (and EPA has not disapproved such proposal) and has provided an opportunity for public comment on the permit withdrawal and on the State's proposed approval of the emission reduction proposal.

Emission allowances generated pursuant to the Subpart X rule will be issued to the recipient emission unit identified in the proposal for each ozone/emission control period in which the NO_X emission reductions are verified and the requirements of Subpart X continue to be met. The emission allowances shall be issued by May 1 after the ozone control period in which the NO_X emission reduction has occurred, and may be used (traded or sold) in any future emission control period. Note that the emission allowances are not granted and used until after the emission reductions have actually occurred.

Section 217.845 Emissions Determination Methods

The owner or operator of an emission reduction unit must demonstrate that the source facility has obtained the planned NO_X emission reductions, and has not exceeded its NO_X emission cap. If the NO_X emission reduction is due to NO_X emission reductions resulting from the use of emission reduction technology, the NO_X emission rates for each emission reduction unit must be determined through the use of Continuous Emission Monitors (CEMs) in accordance with 35 IAC section 217.850 or through the use of any test methods or procedures provided in 40 CFR part 60 and approved by the Illinois EPA, or any method approved by the Illinois EPA when included as Federally enforceable conditions in a source permit issued or revised pursuant to Subpart X. If a test based on 40 CFR part 60 is to be used, an initial test must be conducted 90 days prior to the date the specified emission reductions will be obtained, or within 45 days of Illinois EPA's request for such test for NO_X emission reductions already obtained. The owner or operator of the emission reduction unit must notify the Illinois EPA in writing of any test performed to comply with the requirements of Subpart X, and must make this notification at least 30 days prior to such test.

If the NO_X emission reduction is due to a reduction in operating hours or to a reduction of the NO_X emission rate during the ozone control period, the owner/operator of the emissions unit must submit an initial compliance demonstration plan to the Illinois EPA 120 days prior to the date that the emission reduction will commence in compliance with the approved emission reduction proposal. Such a demonstration shall be based on the actual NO_X emission rate measured in accordance with 35 IAC section 217.850.

By November 1 following each ozone control period in which NO_X emission reductions are generated, the owner/operator of the emission reduction source must submit to the Illinois EPA a compliance certification, including supporting data, and must monitor and report the NO_X emissions during each ozone control period from all NO_X emission units subject to the NO_X emission cap.

At least 120 days prior to the date that the emission reduction source will commence NO_X emission reductions in compliance with its emission reduction proposal, the owner/operator of the source must submit to the Illinois EPA a performance evaluation of each CEM using the performance specifications given in 40 CFR part 60, appendix B.

Section 217.850 Emissions Monitoring

The owner/operator of an emission reduction source must install, calibrate, maintain, and operate CEMs during

each NO_X control period, or an alternative approved by the Illinois EPA and included in a Federally enforceable permit, for measuring NO_X emissions. The CEMs must be operated and data recorded during all periods of operation of the emission units. The owner/operator must also collect and record CEM quality assurance data during calibration checks and zero and span adjustments. The procedures under 40 CFR part 60.13 (incorporated by reference into Subpart X) must be followed in the installation, evaluation, and operation of each CEM.

If NO_X emission rates, in pounds/hour, are not obtainable during CEM breakdowns, repairs, calibration checks, or zero and span adjustments, NO_X emission data must be obtained using the data substitution procedures contained in 40 CFR part 75, subpart D. If NO_X emission rates, in pounds per million British thermal unit (Btu) of heat input, are not obtainable during CEM breakdowns, repairs, calibration checks, or zero and span adjustments, NO_X emissions data must be obtained by using the rolling hourly average of the NO_X emissions recorded for the previous 30 day period of operation if the data capture of such period is 95 percent or greater and the period of missing data is equal to or less than 24 consecutive hours. If the data capture for the previous 30 day period is less than 95 percent or the period of missing data is greater than 24 hours, the NO_X emission data must be obtained using the highest hourly NO_X emission average recorded during the previous 30 days of operation.

The CEM data must be subject to the quality assurance procedures and requirements of 40 CFR part 60, appendix F.

Section 217.855 Reporting

By November 1 of each year beginning in the first year NO_X emission reductions are generated, an owner/operator of an emission reduction unit must, as a seasonal component of the source facility's annual emission report, report to the Illinois EPA the total ozone control period NO_X emissions for each NO_X emission unit subject to the NO_X emissions cap.

Within 30 days after receipt of performance test data from initial performance tests for emission units and CEMs, the owner/operator of a subject emission source must report the test data to the Illinois EPA.

Section 217.860 Recordkeeping

For each NO_X emission unit subject to a NO_X emissions cap, the owner/operator must keep the following records:

(1) Daily, monthly, and control period operating hours;

(2) Type and quantity of each fuel used daily during the ozone control period;

(3) Ozone control period capacity of fuels fired;

(4) Monitoring records; and,

(5) The performance test data from the initial performance test for emission reduction unit and the performance evaluation for each CEM.

The owner/operator of an emission reduction source must maintain records of the following information for each operating day and for each NO_X emissions unit subject to a NO_X emissions cap:

(1) Date;

(2) Average hourly NO_X mass emissions rate in pounds per hour;

(3) Control period total NO_X mass emissions to date;

(4) Identification of periods when emission data have been excluded from the calculation of NO_X mass emissions, the reasons for excluding the data, and corrective actions taken;

(5) Identification of the time when the NO_X emissions concentrations exceeded the full spans of the CEMs;

(6) Descriptions of any modifications of the CEMs that could affect the ability of the CEMs to comply with performance specifications; and,

(7) Results of daily CEM drift tests and quarterly accuracy assessment as required under 40 CFR part 60, subpart F.

The owner/operator of any NO_X emission reduction source subject to the CEM requirements of Subpart X must submit a compliance certification by November 1 following each ozone control period in which NO_X emission reductions are generated.

Data records are to be maintained for a period of 5 years after their creation.

Section 217.865 Enforcement

If a NO_X emission reduction source experiences excess NO_X emissions during an ozone control period, the owner/operator of the source must purchase NO_X emission allowances through the NO_X trading program to compensate for the excess NO_X emissions. The following NO_X allowance purchase levels are required:

(1) For one control period of excess NO_X emissions, the owner/operator must purchase NO_X emission allowances to cover two (2) times the NO_X emission excess;

(2) For two control periods of excess NO_X emissions, the owner/operator must purchase NO_X emission allowance to cover three (3) times the total NO_X emission excess for the two control periods; and,

(3) For three control periods of excess NO_X emissions, the owner/operator must purchase NO_X emission allowances to cover four (4) times the total NO_X emission excess for the three control periods.

The purchased NO_X emission allowances must be surrendered to the Illinois EPA by December 31 following the ozone control period in which the emission reduction source has excess NO_X emissions.

After three consecutive ozone control periods of excess NO_X emissions, the source may not generate NO_X emission reduction credits to qualify for NO_X emission reduction allowances. All surrendered NO_X emission allowances are retired for the benefit of air quality.

B. What is Illinois' basis for supporting approval of the subject rule as a SIP revision?

On October 26, 2001, EPA met with the Illinois EPA to discuss a number of pending issues. Included in this discussion was a discussion concerning the basis for supporting the approval of the Subpart X rule as a SIP revision. The following presents points raised by the Illinois EPA to support the approval of the Subpart X rule.

General Points

The Illinois EPA notes that the Subpart X rule is an innovative regulatory effort to obtain additional NO_X emission reductions from sources that would otherwise not be controlled. This will provide for more reductions in regional NO_X emissions than would otherwise be obtained solely through compliance with Illinois' other NO_X emission control rules under the NO_X SIP call. The Illinois EPA expects Subpart X to provide NO_X emission reductions within the State of Illinois even though sources complying with Subpart X will be able to trade away the granted NO_X emission allowances. This is due to the retirement of 20 percent of the Subpart X NO_X emission reductions as a benefit for improved air quality.[2]

The Illinois EPA believes that Subpart X meets EPA's Economic Incentive Program (EIP) guidance (''Improving Air Quality with Economic Incentive Programs,'' EPA–452/R–01–001, January

[2] Review of an Illinois Pollution Control Board (IPCB) hearing record also shows that the State also views the retirement of 20 percent of the generated NO_X emission allowances as giving the EPA a further reason for accepting 40 CFR part 60 monitoring requirements for Subpart X sources in lieu of 40 CFR part 75 monitoring requirements, as required under the NO_X SIP call.

2001), and, therefore, is approvable based on this policy. The EIP guidance provides for the use of EIPs to comply with the NO_X SIP call.

The Illinois EPA notes that Subpart X has the potential to reduce costs of compliance for sources involved in the NO_X trading program. Under the NO_X trading program, some sources will be forced to purchase NO_X emission allowances. Providing for additional tradable NO_X emission allowances through Subpart X may provide lower cost NO_X emission allowances than may be available from EGUs and major non-EGU sources participating in the NO_X trading program.

NO_X Emission Reductions

The Illinois EPA points out that Subpart X will benefit the environment by retiring 20 percent of the NO_X emission reductions resulting from this rule. Sources complying with Subpart X will only be able to obtain tradable NO_X emission allowances for 80 percent of the NO_X emission reductions they have achieved.

The NO_X emission reductions must be quantifiable, verifiable, and Federally enforceable. This distinguishes Subpart X from the type of emission reduction program expected under EPA's stationary source voluntary measures policy.

The Illinois EPA notes that the requirement for an emissions cap on ''similar'' units at a NO_X emission reduction source is also a very important feature of the Subpart X rule. Since reduction of operating hours or shutdown of an emissions unit are an acceptable procedure for obtaining NO_X emission reductions, the emissions cap prevents a source from shifting operations or production between source units, producing artificial emission reduction credits.

The Illinois EPA also notes that the Subpart X emission reductions are Federally enforceable since all source-specific emission reduction plans must be incorporated into Federally Enforceable State Operating Permits (FESOPs). Adequate emission recordkeeping and reporting requirements are provided to allow such enforcement.

Compliance and Enforcement Mechanisms

The State asserts that non-compliance deterrence mechanisms are built into the Subpart X rule. These mechanisms include:

(1) Sources subject to Subpart X must verify emission reductions at the end of each ozone control season;

(2) The EPA must recognize the NO_X emission reductions as real before it creates NO_X emission allowances for the complying source's use in the NO_X trading program;

(3) NO_X emission allowances granted by the EPA cannot be used until the ozone control period following their generation (the source cannot trade or use projected future NO_X emission allowances);

(4) Failure to comply leads to increasingly stringent penalties (each succeeding ozone control period of noncompliance leads to more stringent emission reduction penalties), including the surrendering of NO_X emission allowances; and,

(5) The State also has its standard mechanisms available to enforce the NO_X emission reductions for sources complying with Subpart X.

Subpart X Meets Requirements of EPA's EIP Guidance

The Illinois EPA notes that there are three fundamental principles to all EIPs: Integrity; equity; and, environmental benefit. The Illinois EPA believes that the Subpart X rule complies with these principles, and, therefore, would qualify as an EIP.

From the standpoint of integrity, the Illinois EPA notes that emission reductions resulting from an EIP emissions control program must be: Surplus; quantifiable; enforceable; and, permanent. The Illinois EPA believes that the Subpart X rule would produce NO_X emission reductions meeting these requirements. The resulting NO_X emission reductions are surplus because they are not otherwise relied on for attainment purposes in the SIP, and are not required by other SIP-related emission control requirements, consent decrees, or Federal rules or requirements.

The NO_X emission reductions that would result from the Subpart X rule are enforceable because: They are independently verifiable; program violations are defined through the identification of excess emissions and FESOP violations; those sources and owner/operators liable for violations can be identified; both the State and EPA maintain the ability to apply penalties and secure appropriate corrective actions where applicable; citizens have access to all emissions-related information obtained from the sources; citizens can file suits against the sources; and, the NO_X emission reductions are enforceable in accordance with other EPA guidance on practicable enforceability.

The emission reductions are quantifiable because they can be reliably measured and determined. Subpart X requires source monitoring and recordkeeping of NO_X emissions and NO_X emission reductions.

The Illinois EPA believes that the NO_X emission reductions can be considered to be permanent if the State is able to ensure that no emission increases (compared to emissions if there was no EIP) occur over the time period defined in the SIP. The State believes that Subpart X sources are similar to opt-in units under the NO_X Budget Trading Program, but with even more stringent requirements due to the emissions cap requirement of the Subpart X rule. Emission allowances are earned annually due to retrospective emission reductions (therefore, they are equivalent to permanent emission reductions). The NO_X emission allowances to be traded by Subpart X sources are not based on ''future'' NO_X emission reductions. Generated emission allowances are verified annually, and cannot be granted if the emission reductions have not already occurred. Withdrawal of a source from the program and its emission reductions are controlled by the State, who must approve such a withdrawal. A withdrawing source cannot generate new NO_X emission allowances subsequent to withdrawal from the Subpart X program. Subpart X should most appropriately be viewed as a one-year emission reduction program that is subject to annual renewal.

The State views the Subpart X rule as a compliance flexibility EIP. Thus, emission reductions are permanent if the State is able to ensure that no emission increases occur over the time period that Subpart X exists within the SIP.

The State views Subpart X as providing equity. All segments of the population are protected from localized public health problems since the Subpart X rule applies throughout the State. No segment of the population receives a disproportionate share of the program's benefits and non-benefits. Sources will volunteer to provide the NO_X emission reductions, and may potentially benefit economically from the sale of the NO_X emission allowances, or, at minimum, defray emission control costs.

The Subpart X rule will provide environmental benefits. The application of the rule will provide additional NO_X emission reductions not already required by existing NO_X control rules. Retiring 20 percent of the NO_X emission reductions will provide additional environmental benefits. Application of the rule should reduce regional NO_X

emissions within Illinois and ozone transport to downwind States.

C. How does the subject rule interface with or relate to other Illinois NO_X rules?

Under Illinois' existing NO_X control rules, EGUs and other covered sources may choose to reduce NO_X emissions below State-required levels (below levels needed to meet the State's NO_X emission budget) to produce tradable NO_X emission allowances sold through EPA's NO_X Budget Trading Program. Other EGUs may find it necessary to purchase NO_X emission allowances through the trading program to meet Illinois' emission budget and facility-specific NO_X emission limits. The sale and purchase of NO_X emission allowances through the trading program allows a large number of sources to more economically meet NO_X emission limits and allows the NO_X SIP call (and CAIR) States to meet required NO_X emission limits.

As noted above, the Subpart X sources producing NO_X emission allowances would be able to trade/sell the emission allowances to sources subject to Illinois' Subpart U and Subpart W NO_X rules. The Subpart U and Subpart W sources would be able to use the purchased NO_X emission allowances to meet the State's required NO_X emission limits.

To make sure that generated NO_X emission allowances are truly surplus and not double counted, Subpart X sources may not be subject to the NO_X emission control requirements of Illinois' Subparts T (Cement Kilns), U (NO_X Control and Trading Program for Specified NO_X Generating Units), V (Electric Power Generation), or W (NO_X Trading Program for Electrical Generating Units) of 35 IAC part 217 (Nitrogen Oxides Emissions). Other than these source restrictions, Subpart X does not further limit the types of NO_X sources that could be included under Subpart X (as long as the NO_X emission reductions can be quantified, enforced, and can be demonstrated to exist throughout the ozone control periods).

Subpart X requirements are clearly meant to provide supplemental NO_X emission reductions aimed at compliance with EPA's NO_X SIP call, and, thus, are directed at the control of inter-state transported ozone. Subpart X emission controls may also provide additional reductions of transported ozone and NO_X within the State of Illinois, reducing peak ozone concentrations in Illinois' ozone nonattainment areas. This is particularly true if Subpart X sources trade generated NO_X emission allowances to sources downwind of the ozone nonattainment areas (St. Louis/Metro-East St. Louis and Chicago) or located outside of the State of Illinois. Although the State intends to support the trading of NO_X emission allowances generated under Subpart X to sources controlled under Subparts U and W of 35 IAC part 217, the State has placed no restrictions on the trading of Subpart X-generated NO_X emission allowances to sources only within the State of Illinois. Subpart X sources are free to trade emission allowances to sources outside of Illinois. Such trades would benefit Illinois ozone nonattainment areas by effectively removing NO_X emissions from the State of Illinois.

IV. EPA Technical Review of the Subject Rule and SIP Revision Request

A. Is the Subpart X rule specifically required by any EPA regulations or policies or requirements of the Clean Air Act?

The subject rule is not needed to meet the requirements of an ozone attainment plan or to meet other specific NO_X emission control requirements of the CAA or EPA regulations.

B. What EPA policies and requirements are applicable to the subject rule?

Review of the EPA NO_X policies and the language and intent of the Subpart X rule and its supporting documentation shows that three separate EPA policies may be relevant to some extent in the review of the Subpart X rule. First, since the primary purpose of the Subpart X rule is to provide sources with tradable NO_X emission allowances for participation in EPA's NO_X Budget Trading Program, those portions of EPA's NO_X SIP call policy dealing with NO_X emission allowances and NO_X allowance trading, as well as NO_X SIP call source monitoring requirements, must be considered (**Federal Register**, ''40 CFR parts 51, 72, 75, and 96 Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Rule,'' 63 FR 57356, October 27, 1998). This policy has the most significant impact on our view of the approvability of the Subpart X rule.

Second, since the Subpart X rule involves the voluntary control of stationary sources and the incorporation of that rule into the Illinois SIP, one must consider EPA's policy regarding the incorporation of voluntary stationary source emission reduction programs into SIPs (Memorandum, from John Seitz, Director, Office of Air Quality Planning and Standards, to Air Division Directors, Regions 1–10, United States Environmental Protection Agency, ''Incorporating Voluntary Stationary Source Emission Reduction Programs Into State Implementation Plans—FINAL POLICY,'' January 19, 2001). It is concluded, however, that this policy is generally not applicable in this situation.

The voluntary measures policy was designed with the assumption that the emission reduction credits would be applied to achieve compliance with SIP attainment, maintenance, and Rate-Of-Progress (ROP) requirements (particularly those for ozone SIPs), and that the voluntary measures program would provide emission reductions that are quantifiable, surplus, permanent, and enforceable (by the State). This policy, however, does not address the NO_X emission reduction requirements of EPA's NO_X SIP call. Therefore, this policy is of minimal relevance to the intended use of the Subpart X rule, and, therefore, to the Subpart X rule itself.

Finally, as noted above, the Illinois EPA views Subpart X as a rule that provides for an EIP. Therefore, we need to consider EPA's policy addressing EIPs. Due to the real intent of Subpart X (to produce tradable NO_X emission allowances for sale in EPA's NO_X trading program), this policy is not as relevant as the NO_X SIP call policy. Although the EIP policy clearly indicates that the EIPs may be used to comply with EPA's NO_X SIP call policy, the EIP policy also clearly notes that the use of an EIP does not override the requirements of the NO_X SIP call itself. Any requested NO_X SIP revision failing to meet the requirements of the NO_X SIP call would also fail to comply with the requirements of the EIP policy. In this case, the more critical policy/requirements of concern are those of the NO_X SIP call itself rather than other aspects of the EIP policy. For this reason, the EIP policy is not given further consideration here.

C. Is the subject rule allowed under EPA policy and requirements?

As noted above, the NO_X SIP call is the most relevant policy considered here. The NO_X SIP call does not specifically address SIP revisions that provide for voluntary NO_X emission controls in the manner covered in Illinois' Subpart X rule. Nonetheless, the NO_X SIP call does encourage States to use whatever NO_X emission reductions they deem necessary to achieve their NO_X state NO_X emission budgets in a cost-effective and reasonable manner. In addition, the NO_X SIP call does not rule out the possibility of achieving the NO_X

emission reductions through the use of voluntary controls as long as such resulting emission reductions are quantifiable, monitorable, and achieve valid NO_X emission reductions during the NO_X control period. It is concluded that the NO_X SIP call does not directly forbid the generation of NO_X emission allowances using voluntary emission controls and, therefore, may allow such emission control measures.

The monitoring aspects of Subpart X, as more thoroughly discussed below, are the main issue of interest and concern in this case. The NO_X SIP call is very specific about the types of emissions monitoring and reporting that are required to meet the NO_X SIP call and emissions trading requirements. Subpart X, as discussed below, contains monitoring requirements which differ from those discussed in 40 CFR part 75.

D. What are the differences in the monitoring requirements of Subpart X and those of the NO_X SIP call?

As noted above, Subpart X requires major NO_X emission sources to install and operate CEMs. Subpart X, however, would also allow sources to use alternative monitoring techniques approved by the State and included in Federally enforceable source permits. Subpart X requires the use of CEMs to follow requirements in 40 CFR part 60, and does not require the use and reporting of CEM data to comply with 40 CFR part 75. The failure of Subpart X to require strict adherence to the requirements of 40 CFR part 75 for CEM data is a significant shortfall in the rule.

With regard to non-CEM monitoring techniques, 40 CFR part 75 does permit the use of an optional non-CEM approach to determine hourly sulfur dioxide, carbon dioxide, and NO_X emissions based on default or fuel- and unit-specific emission rates (per unit of heat input) and hourly fuel usage (heat input) rates for low-mass emission units. This approach is not allowed for coal-fired (solid fuel-fired) units. For NO_X, the ''low mass emissions unit'' cannot emit NO_X at a level exceeding 50 tons annually and 25 tons during the ozone control period to qualify for the use of the non-CEM monitoring procedures. All coal-fired units, regardless of the NO_X emission rates, must use CEMs meeting the requirements of 40 CFR part 75 to qualify for inclusion in the NO_X Budget Trading Program.

Subpart X places no emissions size limit on the sources seeking to use monitoring methods other than the use of CEMs. In addition, Subpart X would not restrict the use of alternative monitoring techniques to natural gas-fired or fuel oil-fired units as would 40 CFR part 75.

Based on these observations, Subpart X could lead to monitoring techniques that are incompatible with the requirements of 40 CFR part 75 and may produce results which may not meet the expressed ''level playing field'' goal of the NO_X SIP call and NO_X Budget Trading program.

With regard to the requirements for CEMs (assuming a source cannot find or chooses not to pursue an ''acceptable'' alternative), it is noted that the CEM requirements in 40 CFR part 60 are not as prescriptive as the CEM requirements in 40 CFR part 75. The 40 CFR part 60 CEM monitoring requirements are not directed at the needs of the NO_X Budget Trading Program. Based on the restrictive wording of the NO_X SIP call and 40 CFR part 96 regarding the need for monitoring, recordkeeping, and reporting to comply with the requirements of 40 CFR part 75, EPA believes that the monitoring requirements of Subpart X are not sufficient to assure the adequacy of the Subpart X NO_X emission allowances meeting the requirements of the NO_X allowance trading program as specified in 40 CFR part 96.

The Illinois EPA has indicated that, given the relatively small source size of sources likely to pursue Subpart X NO_X emission reductions and tradable NO_X emission allowances, it is not cost-effective for these sources to be required to comply with the monitoring requirements of 40 CFR part 75. Information contained in an Illinois Pollution Control Board hearing record for Subpart X indicates that the State expects most Subpart X sources to have NO_X emission levels at or below 25 tons per ozone season (April through October). Given the low NO_X emissions expected, it is unclear why the State has not adopted the small-source procedures of 40 CFR part 75. It is recognized that some Subpart X sources would be coal-burning sources, and, thus, excluded from the use of the small-source provisions of 40 CFR part 75.

Illinois has not provided cost-effectiveness estimates for these sources to demonstrate that the 40 CFR part 75 CEM requirements are significantly less cost-effective than the CEM requirements of 40 CFR part 60. Illinois has also not demonstrated that 40 CFR part 60 monitoring requirements would provide NO_X emission estimates comparable to those of 40 CFR part 75.

E. Are there any source categories not covered by 40 CFR part 75 that are covered by Subpart X?

The requirements of 40 CFR part 75, and particularly those dealing with low mass emission sources, are primarily directed at sources that operate and generate tradable NO_X emission allowances through emission reductions on a ongoing basis. The requirements of 40 CFR part 75 cannot be applied to the crediting of source closures as NO_X emission allowances in the NO_X trading program. Review of the Subpart X rule and documentation of the NO_X emission allowances it would generate shows that Subpart X would produce such NO_X emission allowances.

A source category not addressed by 40 CFR part 75, but which may be addressed through Subpart X is NO_X emission reductions resulting from NO_X emission controls at small solid fuel-fired combustion units. The ''small source'' provisions of 40 CFR part 75 cannot be applied for such sources. It is not clear at this time what the total NO_X emission reduction potential is for such sources.

F. What technical problems and issues of concern have we found for the subject rule?

1. General Comments and Concerns

We have several major areas of concern regarding the Subpart X rule and its intended use. First, the rule does not guarantee that NO_X emission allowances would only be awarded for emission reductions that are real and that are additional NO_X emission reductions beyond those that would have occurred anyway, i.e., even in the absence of Subpart X. By providing credit for source shutdowns or reduced utilization of units claiming credit under Subpart X (Subpart X units) and for NO_X emission reductions made as long ago as 1996, the Subpart X rule would lead to NO_X emission allowances for NO_X emission reductions occurring before the Subpart X rule was adopted by the State. In addition, despite an emissions cap on all similar source units at a source facility, this rule could still allow NO_X emission allowances for shifting of utilization/production from Subpart X units to unregulated units within the same source facility or to units in another source facility and so could lead to crediting of source changes with no real NO_X emission reductions.

Second, we are concerned that the Subpart X rule would not require the same level of monitoring required of sources participating in the NO_X Budget Trading Program. This raises questions

concerning the equity of Subpart X-generated NO_X emission allowances versus those generated by sources following the monitoring requirements of 40 CFR part 75. Although the State has argued that the 20 percent set-aside of NO_X emission reductions from Subpart X units to benefit the environment should offset this concern, we propose that the State has not provided a basis for concluding that the 20 percent set-aside actually addresses this deficiency.

Finally, even though the State has argued that Subpart X constitutes an EIP and EIPs may be used to provide NO_X SIP call emission credits, we again note that the EIP guidance also states that NO_X SIP call requirements supersede EIP requirements. This means that rules meeting EIP requirements may not be adequate to meet NO_X SIP call/NO_X allowance trading requirements. We believe that this is the situation with the Subpart X rule.

2. Comments on Specific Subpart X Rule Provisions

Section 217.810

This section provides for a source emission cap to prevent shifting of utilization from the Subpart X units to other units of the same type at the source facility. This emissions cap does not address shifting of utilization from the Subpart X unit(s) to other units at other source facilities or at the same facility. There is no basis for assuming that this type of shifting cannot occur, e.g., for small electric generating units not covered in the State's current NO_X rules for electric generating units. In addition, the Subpart X rule provides for requests for exceptions from the requirement to include other units at the source facility in the emissions cap, but provides no standard for resolving such requests. (Section 217.835(a)(5) suggests what showing should be made, but does not make this the standard for approval.) Moreover, in light of the importance of not crediting utilization shifting, exceptions to inclusion in the source emissions cap allowed in this section is not acceptable because this section of the Subpart X rule does not require such exceptions to be approved by both the State and the EPA.

The rule does not specify how the emissions cap is to be calculated. This needs to be specified explicitly or must be subject to State and EPA approval if done on a case-by-case basis. We believe that the rule errs in not requiring the use of the same methodology for setting the baseline for the Subpart X unit and for setting the emissions cap for all non-NO_X SIP call units (all NO_X emission units not covered by the State's NO_X emission control rules in the State's NO_X SIP) at the source facility.

This section also provides for the crediting of NO_X emission reductions resulting from source shutdowns. As noted in comments below regarding section 217.815 of the rule, we have serious concerns about granting such NO_X emission allowances.

Section 217.815

The rule allows for NO_X emission reduction credits where a unit: uses an emission reduction technology; permanently shuts down; or reduces the NO_X emission rate or operating hours where this is reflected in the unit's source permit. We have the following concerns about such NO_X emission reduction credits:

a. We believe that this section is unacceptable because it would result in the granting of emission credits for source shutdowns. The source shutdown credit would allow a source owner to shut down a unit and shift its utilization to another unit at a different source facility. The source emissions cap provision of the Subpart X rule does not address this potential. In addition, this section also would allow the source owner to shut down a unit that is at or near the end of its useful life and to get an emission reduction credit for every year after the shutdown of the unit. In this situation, it is likely that the source shutdown would have occurred even without the existence of the Subpart X rule. This is particularly problematic since the Subpart X baseline for NO_X emission reduction credits resulting from source shutdowns is 1995. This means that units shut down prior to the State adoption of the Subpart X rule would be given NO_X reduction credits. This is unacceptable;

b. Credit for lowering the NO_X emission rate is generally acceptable, provided that the total NO_X emissions from a source facility actually decrease. This section is unacceptable, however, because it would result in the granting of NO_X emission allowances even though a source owner/operator may simply shift utilization from the Subpart X unit to a unit at another facility. The source emission cap of Subpart X does not address this potential;

c. The rule states that the NO_X emission reductions must be quantifiable, verifiable, and Federally enforceable. It is unclear whether these requirements are in addition to other requirements in the rule, which, as discussed below, do not ensure that the NO_X emission reductions are properly quantifiable and verifiable. In addition, the Subpart X rule does not specify what showing must be made by the source owner or operator to satisfy these requirements; and,

d. The Subpart X rule states that credited NO_X emission reductions (other than those due to unit shutdowns) may start in 2003. This is in conflict with the NO_X Budget Trading Program and NO_X SIP call requirements, which would not credit NO_X emission reductions occurring prior to 2004. NO_X emission credits should not be credited for NO_X emission reductions occurring prior to the start of the NO_X Budget Trading Program.

Section 217.820

To establish the emissions baseline from which NO_X emission reductions are determined, the rule allows the source owner/operator to use the unit's 1995 NO_X emissions multiplied by 5/12 or its 1995 ozone season emissions as reflected in EPA's NO_X SIP call emissions inventory. We consider this baseline period to be too far into the past. The rule fails to require the source owner/operator to use the most current unit emissions (those determined just prior to the implementation of the Subpart X NO_X emission reduction) for the baseline emissions. We are concerned about this issue for the following reasons:

a. Using a 1995 baseline allows the source owner/operator to get credit for NO_X emission reductions that occurred several years in the past prior to the implementation of the State's NO_X control rules and prior to the adoption of Subpart X. Allowing credit for NO_X emission reductions that have already occurred and allowing these credits to be traded to sources that need such credits to meet NO_X SIP call-based emission limits would jeopardize Illinois' ability to meet the NO_X SIP call emission reduction requirements;

b. Some NO_X emission reductions from 1995 for EGUs and non-EGUs are already reflected in the State's NO_X emission budget established in the NO_X SIP call. For example, the State emissions budget for EGUs used 1995 heat input adjusted for growth, with growth reflecting new units and increases and decreases in heat input for existing units occurring through 2004, the implementation year for the NO_X SIP call. Giving credit for NO_X emission reductions since 1995 through Subpart X could double count emission reductions that are reflected in the State's NO_X emission budget; and,

c. It may be reasonable to allow some averaging of recent years' ozone season emissions data since the most recent year may not be representative of normal unit operation. The Subpart X

rule fails to specify a short period for such averaging, and errs in leaving the averaging period to the discretion of the source owner/operator.

Section 217.835

We believe that this section is deficient in that it does not require the source owner/operator to define how the source's emission cap is determined. The source owner/operator simply has to declare the emissions cap and which source units are covered by the emissions cap.

Subsection (a)(7) of this rule section allows the source owner/operator to specify which source units are to be granted NO_X emission allowances. The purpose of this subsection is unclear. NO_X emission allowances should only be allocated to the Subpart X unit, with the source owner/operator then given the ability to transfer the NO_X emission allowances to units subject to the NO_X Budget Trading Program. This subsection could be incorrectly interpreted as allowing the source owner/operator to assign the NO_X emission allowances to non-Subpart X sources (those not achieving new NO_X emission reductions).

Section 217.840

We disagree with the granting of emission reduction credits for source shutdowns as allowed in this section of the Subpart X rule. We particularly disagree with the granting of NO_X emission allowances for source shutdowns occurring prior to the adoption of Subpart X and prior to the approval of the Subpart X rule as a SIP revision.

Section 217.845

As noted in our comments on sections 217.815 and 217.840 above, there should be no NO_X emission allowances granted for a source shutdown or reduced utilization. This section is unacceptable because it allows the State to approve such emission allowances.

This section allows the use of emission monitoring under 40 CFR part 60. As discussed elsewhere in this proposed rule, this requirement is unacceptable for the granting of NO_X emission allowances to be used in EPA's NO_X Budget Trading Program. NO_X emission reductions supporting such NO_X emission allowances must be confirmed through source monitoring meeting the requirements of 40 CFR part 75.

Section 217.850

40 CFR Part 60 Versus 40 CFR Part 75 Monitoring

This section would require compliance with 40 CFR part 60 for monitoring of source emissions from a Subpart X unit. Because the Subpart X units are generating NO_X emission allowances that will be traded to and used by other units that are subject to the NO_X Budget Trading Program, the Subpart X units should meet the same monitoring requirements as other units subject to the NO_X Budget Trading Program. Therefore, the Subpart X unit does not meet the monitoring requirements of 40 CFR part 75.

If source caps are used for other units at a facility subject to Subpart X, the units subject to the emissions cap must also be monitored using the 40 CFR part 75 requirements to ensure the integrity of the source emissions cap. This section of the Subpart X rule errs in not requiring such source monitoring.

The 40 CFR part 60 monitoring requirements are significantly less stringent than the monitoring requirements of 40 CFR part 75. Therefore, emission reductions generated by sources using 40 CFR part 60 monitoring techniques are assumed to be less accurate than those generated by sources using 40 CFR part 75 monitoring requirements. There is no showing that artificially reducing the emission reduction credits by 20 percent is sufficient to account for the possible inaccuracy of emission reductions determined using 40 CFR part 60 techniques.

Alternative Monitoring

The Subpart X rule allows for alternative source monitoring with the approval of the State. However, the rule provides no standards for approval of the alternative monitoring techniques, e.g., that the alternative monitoring is consistent with the purposes of the required monitoring and that any adverse effect of approving the alternative monitoring is nonexistent or negligible. In addition, exceptions from the specified monitoring requirements must be explicitly subject to the approval of the EPA as well as the State, which is not the case for the adopted rule.

Substitute Data

The Subpart X rule provides for the use of 40 CFR part 75 substitute data when the 40 CFR part 60 continuous emission monitors are out of service or not properly functioning. However, because of record keeping and reporting differences between 40 CFR part 60 and 40 CFR part 75, using 40 CFR part 75 substitute data procedures with 40 CFR part 60 monitoring and data recording is not feasible. 40 CFR part 60, unlike 40 CFR part 75, does not generally require mass emissions for every hour of operation. The data substitute procedures in 40 CFR part 75 rely heavily on the hourly data contained in the 40 CFR part 75 data report. Data cannot be substituted for missing 40 CFR part 60 data without the hourly data record that would have been generated under 40 CFR part 75, and checking the appropriate use of the substitute data procedures is impossible without such hourly data records.

Section 217.855

The Subpart X rule provides for reporting of only ozone season total emissions through an annual emissions report for source units subject to a Subpart X emissions cap. This differs from the emissions reporting requirements for sources subject to the NO_X Budget Trading Program, which are required to be covered by hourly emission reporting for the ozone season.

Sources subject to the NO_X Budget Trading Program are required to make quarterly emission reports in order to provide quality assurance of the emissions data on an on-going basis and so that monitoring problems or reporting errors are found early enough during the ozone season to be corrected before the end of the ozone season. Subpart X only requires annual reports of emissions data, and, therefore, fails to meet the reporting requirements for sources subject to the NO_X Budget Trading Program.

Section 217.860

This section fails to meet the detailed recordkeeping requirements of 40 CFR part 75. The detailed recordkeeping requirements of 40 CFR part 75 are designed to facilitate quality assurance of emissions data. The recordkeeping requirements of this section of the Subpart X rule will not provide for the emissions quality assurance required of other sources subject to the NO_X Budget Trading Program. Therefore, we find this section of the Subpart X rule to be deficient for NO_X allowance trading purposes.

Section 217.865

The rule does not define ''excess emissions.'' Elsewhere in Illinois' NO_X budget trading rules, in Subpart B, section 211.2080, ''excess emissions'' is defined as any tonnage of NO_X emitted by a NO_X budget unit during a control period that exceeds the NO_X emission allowances available for compliance

deduction for the source unit and for a control period. However, a Subpart X unit does not have a requirement to hold emission allowances equal to its NO_X emissions. It is not clear whether ''excess emissions'' in section 217.865 means emissions in excess of the source emissions cap or in excess of the Subpart X unit's permitted emission rate. This ambiguity makes this section of the Subpart X rule unacceptable.

G. What are our proposed actions regarding the approvability of the subject rule?

Based on the rule shortfalls and issues of concern discussed above, we propose that the Subpart X rule does not meet the requirements of 40 CFR parts 75 and 96, and cannot be approved as a revision to the Illinois SIP. We have identified the following general problems exist with the Subpart X rule: (1) The rule unacceptably would grant NO_X emission allowances for source closures; (2) the rule does not prevent shifting of production and NO_X emissions from one facility to another; (3) the rule establishes an emission baseline (from which emission reduction/NO_X emission allowances are earned through subsequent NO_X emission reductions), 1995, that is too far in the past and prior to the State's adoption of the Subpart X rule and prior to the baseline used for other sources involved in the NO_X Budget Trading Program; (4) the rule unacceptably would allow the use of 40 CFR part 60 emissions monitoring requirements rather than 40 CFR part 75 monitoring requirements required of other sources involved in the NO_X Budget Trading Program; and, (5) the rule contains other minor deficiencies as noted above. Together, these problems lead us to propose that the Subpart X rule be disapproved as a revision to the Illinois SIP.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

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

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 15, 2008.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E8–4154 Filed 3–3–08; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 2008–01; Docket 2008–0002, Sequence 1]

RIN 3090–AI43

Federal Travel Regulation (FTR); FTR Case 2007–307; Fly America Act; United States and European Union ''Open Skies'' Air Transport Agreement (U.S.-EU Open Skies Agreement)

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

ACTION: Proposed rule.

SUMMARY: The GSA is proposing to amend the Federal Travel Regulation (FTR) provisions pertaining to the use of United States Flag air carriers under the provisions of the ''Fly America Act.'' This proposed rule would incorporate language based on the United States and European Union ''Open Skies'' Air Transport Agreement (U.S.-EU Open Skies Agreement).

DATES: Comments must be received on or before April 3, 2008.

ADDRESSES: Submit comments identified by FTR case 2007–307 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for any document by first selecting the proper document types and selecting ''General Services Administration—All'' as the agency of choice. At the ''Keyword'' prompt, type in the FTR case number (for example, FTR Case 2007–307) and click on the ''Submit'' button. You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''General Services Administration—All'', and typing the FTR case number in the keyword field. Select the ''Submit'' button.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (VPR), Attn: Diedra Wingate, 1800 F Street, NW., Room 4035, Washington, DC 20405.

Instructions: Please submit comments only and cite FTR case 2007–307 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Umeki Thorne, Office of Travel, Transportation and Asset Management (MT), General Services Administration at (202) 208–7636 or e-mail at *umeki.thorne@gsa.gov*. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FTR case 2007–307.

SUPPLEMENTARY INFORMATION: On April 30, 2007, the United States European Union ''Open Skies'' Air Transport Agreement (U.S.-EU Open Skies Agreement) was signed, providing Community airlines (airlines of the European Community and its Member States) the right to transport passengers and cargo on scheduled and charter flights for U.S. Government procured transportation other than transportation obtained or funded by the Department of Defense, subject to certain conditions. Specifically, Community airlines have the right to transport passengers and cargo on scheduled and charter flights funded by the U.S. Government, including transportation provided to or for a foreign country or international or other organization without reimbursement, when the transportation is between a point in the United States and any point in a Member State or between any two points outside the United States except when:

(1) Transportation is between points for which there is a city-pair contract fare in effect for air passenger transportation services, or

(2) Transportation is obtained or funded by the Secretary of Defense or the Secretary of a military department.

The Federal Travel Regulation (FTR), section 301–10.135(b) (41 CFR 301–10.135(b)) includes an exception to the use of U.S. flag air carrier service when the transportation is provided under a bilateral or multilateral air transportation agreement to which the U.S. Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act. As the U.S.-EU Open Skies Agreement is such an air transportation agreement, this proposed rule would incorporate text into 41 CFR 301–10.135(b) to reflect the content of the U.S.-EU Open Skies Agreement which allows Government-funded travel on Community airlines subject to certain conditions.

The U.S.-EU Open Skies Air Transport Agreement, including the provision relating to U.S. Government procured transportation, has a provisional application date of March 30, 2008. No regulatory action is required to implement the provision addressing U.S. Government Procured Transportation since the Agreement meets the requirements of 49 U.S.C. 40118(b), and the FTR includes a provision referencing that statutory provision at 41 CFR 301–10.135(b). GSA is issuing this proposed rule to ensure notice advising of the U.S. Government procured transportation provisions in the U.S.-EU Open Skies Agreement and the upcoming effective date, and GSA is requesting comments on the proposed rule for use in developing the final rule to be included in the FTR with the objective of making the final rule easy to apply and a readily available source of information relating to the provisions on U.S. Government procured transportation included in the Agreement. A listing of the Member States as found in the U.S.-EU Open Skies Agreement may be accessed via the Department of State's Web site at *http://www.state.gov/e/eeb/rls/othr/2007/84475.htm*.

B. Executive Order 12866

This proposed rule is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates to agency management and personnel.

List of Subjects in 41 CFR Part 301–10

Government employees, Travel and transportation expenses.

Dated: December 7, 2007.

Kevin Messner,

Acting Associate Administrator.

For the reasons set forth in the preamble, it is proposed that 41 CFR

Chapter 301 be amended to read as follows:

PART 301–10—TRANSPORTATION ALLOWABLE

1. The authority citation for 41 CFR part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); 49 U.S.C. 40118.

2. Amend § 301–10.135, by revising paragraph (b) to read as follows:

§ 301–10.135 When must I travel using U.S. Flag air carrier service?

* * * * *

(b) The transportation is provided under a bilateral or multilateral air transportation agreement to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act.

(1) *United States-European Union Open Skies Agreement:* Under this Agreement, community airlines have the right to transport passengers on scheduled and charter flights funded by the U.S. Government, including transportation provided to or for a foreign country or international or other organization without reimbursement, when the transportation is between a point in the United States and any point in a Member State or between any two points outside the United States except when:

(i) Transportation is between points for which there is a city-pair contract fare in effect for air passenger transportation services, or

(ii) Transportation is obtained or funded by the Secretary of Defense or the Secretary of a military department;

(2) A listing of the Member States as found in the U.S.-EU Open Skies Agreement may be accessed via the Department of State's Web site at *http://www.state.gov/e/eeb/rls/othr/2007/84475.htm*; or

* * * * *

[FR Doc. E8–3970 Filed 3–3–08; 8:45 am]

BILLING CODE 6820–14–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1160

RIN 3134–AA01

Technical Amendments To Reflect the New Authorization for a Domestic Indemnity Program

AGENCY: Federal Council on the Arts and the Humanities.

ACTION: Proposed rule.

SUMMARY: The Federal Council on the Arts and the Humanities proposes to amend its regulations to reflect Congress' authorization of a Domestic Indemnity Program under Section 426 of The Consolidated Appropriations Act of 2008, Public Law 110–161 (December 26, 2007). The proposed rule includes examples of exhibitions eligible for indemnification which are intended to provide further guidance to applicants considering applying for indemnification of exhibitions with domestic or foreign-owned objects.

DATES: Comments are invited and must be received by no later than April 3, 2008.

ADDRESSES: You may submit comments, identified by RIN number ''3134–AA01,'' using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: gencounsel@neh.gov. Include ''RIN 3134–AA01, Domestic Indemnity'' in the subject line of the message.

Fax: (202) 606–8600.

Mail: Heather C. Gottry, Counsel to the Federal Council on Arts and the Humanities, 1100 Pennsylvania Avenue, NW., Room 529, Washington, DC 20506.

Hand Delivery/Courier: Heather C. Gottry, Counsel to the Federal Council on the Arts and the Humanities, 1100 Pennsylvania Avenue, NW., Room 529, Washington, DC 20506

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

The Federal Council on the Arts and the Humanities will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Heather C. Gottry, Counsel to the Federal Council on the Arts and the Humanities, 1100 Pennsylvania Avenue, NW., Room 529, Washington, DC 20506. (*Phone:* (202) 606–8322, facsimile (202) 606–8600, or e-mail to *gencounsel@neh.gov*). Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION:

I. Background on Domestic Indemnity Program Technical Amendments

In 1975, the United States Congress enacted the Arts and Artifacts Indemnity Act, 20 U.S.C. Sections 971–977, as amended, which established the Arts and Artifacts Indemnity Program administered by the Federal Council on the Arts and the Humanities (Federal Council). The Federal Council is comprised of the heads of nineteen agencies and was created by Congress, among other things, to coordinate the policies and operations of the National Endowments for the Arts and the Humanities, and the Institute of Museum Services, including the joint support of activities (20 U.S.C. 971).

Under the Arts and Artifacts Indemnity Program, the United States Government guarantees to pay claims for loss or damage, subject to certain limitations, arising from exhibitions of foreign and domestic-owned objects determined by the Federal Council to be of educational, cultural, historical or scientific value. The Arts and Artifacts Indemnity Program is administered by the Museum Program at the National Endowment for the Arts, on behalf of the Federal Council, per ''Indemnities Under the Arts and Artifacts Act'' regulations (hereinafter ''the Regulations''), which are set forth at 45 CFR part 1160.

Since 1975, the Regulations have been promulgated and amended by the Federal Council pursuant to the express and implied rulemaking authorities granted by Congress to make and amend rules needed for the effective administration of the Indemnity Program. Among other things, Congress expressly granted the Federal Council authorities to establish the terms and conditions of indemnity agreements; to set application procedures; and to establish claims' adjustment procedures. (20 U.S.C. 971(a)(2), 973(a), 975(a). In 1995, the Federal Council amended the Regulations to permit the indemnification of domestic-owned objects on exhibition in the United States when they are part of international exhibitions, so long as the foreign loans were integral to the exhibition as a whole.

On December 26, 2007, through Section 426 of The Consolidated Appropriations Act of 2008, Public Law 110–161, the Arts and Artifacts Indemnity Act was amended in part to expand coverage of the Arts and Artifacts Indemnity program to up to $5,000,000,000 at any one time for domestic exhibitions. (20 U.S.C. 974(b)). The Federal Council proposes to make

technical amendments to the Regulations to reflect this authorization of a Domestic Indemnity Program. These technical amendments will fulfill the Federal Council's responsibility to its applicants by ensuring that all regulations are up-to-date and consistent with Congress' authorization of a Domestic Indemnity Program under Section 426 of The Consolidated Appropriations Act of 2008, Public Law 110–161 (December 26, 2007).

II. Public Comment Procedures

The technical amendments proposed in this rulemaking reflect Congress' authorization of a Domestic Indemnity Program under Section 426 of The Consolidated Appropriations Act of 2008, Public Law 110–161 (December 26, 2007). The public is invited to make comments on any of the proposed changes.

Comments should be submitted as set forth in the **ADDRESSES** section of this document. Comments, including names, street addresses, and other contact information of respondents, will be available upon request for public review at National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 529, Washington, DC 20506, during regular business hours (8:30 a.m. to 5 p.m.), Monday through Friday, except Federal holidays. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, please is advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

All written comments received by the date indicated in the **DATES** section of this document and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule. Written comments on the proposed rule should be specific, confined to issues pertinent to the proposed technical amendments, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal that the comment addresses. The Federal Council may not necessarily consider or include in the Administrative Record comments that the Federal Council receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or comments delivered to an address other than those listed above (See **ADDRESSES**).

III. Matters of Regulatory Procedure

Regulatory Planning and Review (E.O. 12866)

Under Executive Order 12866, the Federal Council on the Arts and the Humanities must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Proposed rule makes technical amendments to reflect Congress' authorization of a Domestic Indemnity Program under Section 426 of The Consolidated Appropriations Act of 2008, Public Law 110–161 (December 26, 2007)). As such, it does not impose a compliance burden on the economy generally or on any person or entity. Accordingly, this rule is not a ''significant regulatory action'' from an economic standpoint, and it does not otherwise create any inconsistencies or budgetary impacts to any other agency or Federal Program.

Regulatory Flexibility Act

Because this proposed rule would make certain technical amendments, the Federal Council has determined in Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) review that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule is exempt from the requirements of the Paperwork Reduction Act, since it makes only minor technical amendments to reflect Congress' authorization of a Domestic Indemnity Program under Section 426 of The Consolidated Appropriations Act of 2008, Public Law 110–161 (December 26, 2007). An OMB form 83–1 is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this proposed rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more as adjusted for inflation in any one year.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

a. Does not have an annual effect on the economy of $100 million or more.

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

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. No rights, property or compensation has been, or will be, taken. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, this proposed rule does not have federalism implications that warrant the preparation of a federalism assessment.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Federal Council has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, the Federal Council has evaluated this proposed rule and determined that it has no potential negative effects on federally recognized Indian tribes.

National Environmental Policy Act

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 45 CFR Part 1160

Administrative practice and procedure, Art, Indemnity payments, Museums, Nonprofit organizations.

Dated: February 27, 2008.

Heather C. Gottry,

Counsel to the Federal Council on the Arts and the Humanities.

For the reasons stated in the preamble and under the authority of Section 426 of The Consolidated Appropriations Act of 2008, Public Law 110–161 (December 26, 2007), the Federal Council on the Arts and the Humanities proposes to amend 45 CFR part 1160 as follows:

PART 1160—INDEMNITIES UNDER THE ARTS AND ARTIFACTS INDEMNITY ACT

1. The authority citation for 45 CFR part 1160 continues to read as follows:

Authority: 20 U.S.C. 971–977.

2. Revise Section 1160.4 to read as follows:

§ 1160.4 Eligibility for international exhibitions.

An indemnity agreement for an international exhibition made under these regulations shall cover:

(a) Eligible items from outside the United States while on exhibition in the United States;

(b) Eligible items from the United States while on exhibition outside this country, preferably when they are part of an exchange of exhibitions; and

(c) Eligible items from the United States while on exhibition in the United States, in connection with other eligible items from outside the United States which are integral to the exhibition as a whole.

(d)(1) *Example.* An American art museum is organizing a retrospective exhibition which will include more than 150 works of art by Impressionist painter Auguste Renoir. Museums in Paris and London have agreed to lend 125 works of art, covering every aspect of his career, many of which have not been seen together since the artist's death in 1919. The organizer is planning to include 25 masterpieces by Renoir from American public and private collections. The show will open in Chicago and travel to San Francisco and Washington.

(2) *Discussion.* This example is a common application for coverage of both foreign and domestic-owned objects in an international exhibition. The foreign-owned objects are eligible for indemnity coverage under paragraph (a) of this section, and the domestic-owned objects may be eligible for indemnity coverage under paragraph (c) of this section if the foreign-owned objects are integral to the purposes of the exhibition as a whole. In reviewing this application, the Federal Council would evaluate the exhibition as a whole and determine whether the loans of 125 foreign-owned objects are integral to the educational, cultural, historical or scientific significance of the exhibition on Renoir. It would also be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest.

§§ 1160.6 through 1160.12 [Redesignated as §§ 1160.7 through 1160.13]

3. Sections 1160.76 through 1160.12 are redesignated as §§ 1160.7 through 1160.13.

§ 1160.5 [Redesignated as § 1160.6]

4. Section 1160.5 is redesignated as § 1160.6 and a new § 1160.5 is added to read as follows:

§ 1160.5 Eligibility for domestic exhibitions.

An indemnity agreement for a domestic exhibition made under these regulations shall cover eligible items from the United States while on Exhibition in the United States.

(a)(1) *Example 1.* An American museum is undergoing renovation and will be closed to the public for one year. During that time, masterpieces from the collection will go on tour to three other museums in the United States. Many of these works have never been lent for travel, and this will be a unique and the last opportunity for museum visitors in other parts of the country to see them exhibited together. Once the new building opens, they will be permanently installed and dispersed throughout the museum's galleries.

(2) *Discussion.* (i) This is a straightforward example of a domestic exhibition which would be eligible for consideration for indemnity coverage. Under the previous regulations, eligibility was limited to:

(A) Exhibitions in the United States of entirely foreign-owned objects;

(B) Exhibitions outside of the United States of domestic-owned objects; or

(C) Exhibitions in the United States of both foreign and domestic-owned objects, with the foreign-owned objects having integral importance to the exhibition.

(ii) In this example, the Federal Council will consider the educational, cultural, historical, or scientific significance of the proposed domestic exhibition of the domestic-owned objects. It would not be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest.

(b)(1) *Example 2.* An American museum is organizing an exhibition of works by 20th century American artists, which will travel to one other U.S. museum. There are more than 100 objects in the exhibition. The majority of the paintings, drawings and sculpture, valued at more than $500,000,000, are from galleries, museums and private collections in the United States. The organizing curator has selected ten works of art, mostly drawings and preparatory sketches relating to paintings in the exhibition, valued at less than $5,000,000, which will be borrowed from foreign lenders.

(2) *Discussion.* (i) This example raises the question of whether this applicant should submit an application for indemnity coverage for a domestic exhibition or an international exhibition. If the applicant submitted an application for an international exhibition requesting coverage for only the foreign-owned objects eligible under Section 1160.4(a), the Federal Council would evaluate whether the ten foreign-owned objects further the exhibition's educational, cultural, historical, or scientific purposes. It would also be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest. In this case, the applicant would have to insure the loans of the domestic-owned objects by other means.

(ii) In the case of an application for an international exhibition requesting coverage for both domestic-owned and foreign-owned objects eligible under Section 1160.4(a) and (c), the Federal Council would evaluate the exhibition as a whole to determine if the ten foreign-owned objects are integral to achieving the exhibition's educational, cultural, historical, or scientific purposes. It would also be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest.

(iii) If the applicant submitted an application for a domestic exhibition, however, only the loans of domestic-owned objects, the highest valued part of the exhibition, would be eligible for coverage. The Federal Council would consider if the U.S. loans were of educational, cultural or historic interest. It would not be necessary for the U.S. Department of State to determine whether or not the exhibition was in the national interest. In this case, the applicant would have to insure the loans of the foreign-owned objects by other means.

§ 1160.6 [Amended]

5. Amend paragraph (j)(2) of newly redesignated § 1160.6 by removing ''Director of the United States Information Agency that the exhibition'' and adding in its place ''Secretary of State or his designee that the international exhibition with eligible items under § 1160.4''.

§ 1160.7 [Amended]

6. Amend newly redesignated § 1160.7 by removing ''the application will be submitted to the Director of the United States Information Agency'' and adding in its place ''applications for international exhibitions with eligible items under § 1160.4 will be submitted to the Secretary of State or his designee''.

[FR Doc. E8–4065 Filed 3–3–08; 8:45 am]

BILLING CODE 7036–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 36 and 54

[WC Docket No. 05–337; CC Docket No. 96–45; FCC 08–4]

High-Cost Universal Service Support; Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on the Commission's rules governing the amount of high-cost universal service support provided to competitive eligible telecommunications carriers (ETCs), and tentatively concludes that it should eliminate the existing ''identical support'' rule—also known as the ''equal support'' rule—which provides competitive ETCs with the same per-line high-cost universal service support amounts that incumbent local exchange carriers receive.

DATES: Comments are due on or before April 3, 2008 and reply comments are due on or before May 5, 2008.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–337 and CC Docket No. 96–45, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Include the docket number in the subject line of the message.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20544.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov* or *phone:* 202–418–0530 or *TTY:* 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ted Burmeister or Katie King, Wireline Competition Bureau, Telecommunications Access Policy Division, 202–418–7400 or TTY: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 05–337, CC Docket No. 96–45, FCC 08–4, adopted January 9, 2008, and released January 29, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554.

The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''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).

Synopsis of the Notice of Proposed Rulemaking

Introduction

1. In this NPRM, we seek comment on the Commission's rules governing the amount of high-cost universal service support provided to competitive eligible telecommunications carriers (ETCs). As discussed below, we tentatively conclude that we should eliminate the Commission's current ''identical support'' rule—also known as the ''equal support rule''—which provides competitive ETCs with the same per-line high-cost universal service support amounts that incumbent local exchange carriers (LECs) receive. We seek comment on this tentative conclusion. We also seek comment on our tentative conclusion to provide support to a competitive ETC based on its own costs of providing the supported services. We then seek comment on methodologies for determining a competitive ETC's relevant costs for universal service support purposes, and other matters related to how the support should be calculated, including the appropriate reporting obligations, and whether we should cap such support at the level of the incumbent LECs.

Background

2. Section 254(b) of the Communications Act of 1934, as amended, (the Act) directs the Federal-State Joint Board on Universal Service (Joint Board) and the Commission to base policies for the preservation and advancement of universal service on several general principles, including the principle that there should be specific, predictable, and sufficient federal and state universal service support mechanisms. Public Law 104–104. The Commission adopted the additional principle that federal support mechanisms should be competitively neutral. Consistent with this principle and with the Joint Board's recommendation, the Commission determined in 1997 that federal universal service support should be made available, or ''portable,'' to all ETCs that provide supported services, regardless of the technology used. *Federal-State Joint Board on Universal Service,* 62 FR 32862, June 17, 1997 (*First Report and Order*). Section 254(e) of the Act requires that a carrier that receives support ''shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'' Furthermore, pursuant to section 214(e) of the Act, an ETC must provide service and advertise its service throughout the entire service area. In order to receive universal service support, competitors must obtain ETC status from the relevant state commission, or the Commission in cases where the state commission lacks jurisdiction.

3. Under the Commission's existing rules, a competitive ETC that serves a customer in an incumbent LEC's service area receives the same per-line amount of high-cost universal service support that the incumbent LEC would receive for serving that same customer. The Commission's universal service rules do not distinguish between primary and secondary lines; therefore, multiple connections to a single end-user in high-cost areas may receive universal service support for each connection.

4. High-cost support for competitive ETCs has grown rapidly over the last several years, placing extraordinary pressure on the federal universal service fund. In 2006, the universal service fund provided approximately $4.1 billion per year in high-cost support. In contrast, in 2001, high-cost universal service support totaled approximately $2.6 billion. In recent years, this growth has been due to increased support provided to competitive ETCs, which receive high-cost support based on the per-line support that the incumbent LECs receive, rather than on the competitive ETCs' own costs. While support to incumbent LECs has been flat, or has even declined since 2003, competitive ETC support, in the six years from 2001 through 2006, has grown from under $17 million to $980 million—an annual growth rate of over 100 percent. Competitive ETCs received $557 million in high-cost support in the first six months of 2007. Annualizing this amount projects that they will receive approximately $1.11 billion in 2007.

Discussion

Basis of Support for Competitive ETCs

5. To ensure the sufficiency of the universal service mechanism, we believe that the Commission must fundamentally reform how we distribute support under the existing high-cost mechanism. We therefore tentatively conclude that we should eliminate the Commission's current identical support rule for competitive ETCs, which bears no relationship to the amount of money such competitive ETCs have invested in rural and other high-cost areas of the country. We further tentatively conclude that a competitive ETC should receive high-cost support based on its own costs, which better reflect real investment in rural and other high-cost areas of the country, and which creates greater incentives for investment in such areas.

6. In its 1996 *Recommended Decision,* the Joint Board recommended *inter alia* that the Commission should ''establish 'competitive neutrality' as an additional principle upon which it shall base policies for the preservation and advancement of universal service.'' *Federal-State Joint Board on Universal Service,* 12 FCC Rcd 87 (1996). The Joint Board did not define what it meant by ''competitive neutrality,'' however. The Joint Board further recommended that the support payments to incumbent LECs be made ''portable'' to competitive ETCs. Specifically, it recommended that ''[a] CLEC should be allowed to receive support payments to the extent that it is able to capture subscribers formerly served by carriers eligible for frozen support payments or to add new customers in the incumbent LEC's study area.'' The Joint Board also recommended that high-cost support be limited to ''a single connection to a subscriber's principal residence.''

7. In May 1997, the Commission adopted the majority of the Joint Board's recommendations. *First Report and Order,* 62 FR 32862, June 17, 1997. First, it adopted ''competitive neutrality'' as a principle for universal service support. The Commission provided the following very general definition of competitive neutrality: ''competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage or disadvantage one provider over another, and neither unfairly favor or disfavor one technology over another.'' The Commission did not explain what it meant to ''unfairly advantage or disadvantage one provider over another,'' however. In addition, the Commission acknowledged that, ''given the complexities and diversity of the telecommunications marketplace it would be extremely difficult to achieve strict competitive neutrality.''

8. The Commission also adopted the Joint Board's recommendation that it make incumbent carriers' support payments ''portable to other eligible telecommunications carriers.'' In justifying this portability requirement, both the Joint Board and Commission made clear that they envisioned that competitive ETCs would compete directly against incumbent LECs and try to take existing customers from them. Thus, for example, the Commission explained:

> A competitive carrier that has been designated as an eligible telecommunications carrier shall receive universal service support to the extent that it captures subscribers' lines formerly served by an incumbent LEC or new customer lines in that incumbent LEC's study area. At the same time, the incumbent LEC will continue to receive support for the customer lines it continues to serve.

9. The predictions of the Joint Board and the Commission have proven inaccurate, however. First, they did not foresee that competitive ETCs might offer supported services that were not viewed by consumers as substitutes for the incumbent LEC's supported service. Second, wireless carriers, rather than wireline competitive LECs, have received a majority of competitive ETC designations, serve a majority of competitive ETC lines, and have received a majority of competitive ETC support. These wireless competitive ETCs do not capture lines from the incumbent LEC to become a customer's sole service provider, except in a small portion of households. Thus, rather than providing a complete substitute for traditional wireline service, these wireless competitive ETCs largely provide mobile wireless telephony service in addition to a customer's existing wireline service.

10. This has created a number of serious problems for the high-cost fund, and calls into question the rationale for the identical support rule. First, instead of competitive ETCs competing against the incumbent LECs for a relatively fixed number of subscriber lines, the certification of wireless competitive ETCs has led to significant increases in the total number of supported lines. Because the majority of households do not view wireline and wireless services to be direct substitutes, many households subscribe to both services and receive support for multiple lines, which has led to a rapid increase in the size of the fund. In addition, the identical support rule fails to create efficient investment incentives for competitive ETCs. Because a competitive ETC's per-line support is based solely on the per-line support received by the incumbent LEC, rather than its own network investments in an area, the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities, thereby contravening the Act's universal service goal of improving the access to telecommunications services in rural, insular and high-cost areas. Instead, competitive ETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their networks.

11. For these and other reasons, numerous parties and the Joint Board have recommended that the Commission consider abandoning the identical support rule and replacing it with a requirement that competitive ETCs receive support based on their own costs. Since 2004, several parties have recommended that the Commission make such a change. More

recently, on May 1, 2007, the Joint Board issued a recommended decision that ''recommend[ed] the Commission consider abandoning the identical support rule'' and also issued a public notice that sought comment on comprehensive high-cost reform, including ''whether the Commission should replace the current identical support rule with a requirement that competitive ETCs demonstrate their own costs in order to receive support.'' *Federal State Joint Board on Universal Service,* 22 FCC Rcd 8998 (2007); *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform,* 22 FCC Rcd 9023 (2007). The Joint Board also sought comment on other possible avenues of comprehensive high-cost reform.

12. Given the near-unanimous support of Joint Board members for the Commission moving to eliminate the identical support rule, and for the reasons set forth above, we tentatively conclude that the goal of universal service will be better served if we eliminate the identical support rule and instead provide support based on the competitive ETCs' own costs. We tentatively conclude that such a change in policy is further justified by the failure of the identical support rule to reward investment in communications infrastructure in rural and other high-cost areas. Additionally, we tentatively conclude that we should require competitive ETCs that seek high-cost support to file cost data demonstrating their costs of providing service in high-cost service areas. We seek comment on whether this proposal is consistent with the goal of competitive neutrality, given that the majority of competitive ETCs generally do not sell services that consumers view as direct substitutes for wireline services. To the extent that commenters argue that elimination of the identical support rule would be inconsistent with the goal of competitive neutrality, we seek comment on whether such a minimal departure is compensated by the potential stabilization of the high-cost fund and improved investment incentives that would result from the rule change. We seek comment on the above analysis and on these proposals.

Determination of Costs for Competitive ETCs

13. We tentatively conclude that competitive ETCs should file cost data showing their own per-line costs of providing service in a supported service area in order to receive high-cost universal service support. Specifically, we propose that each competitive ETC should file cost data with the Commission or the relevant state commission—whichever approved, or subsequently approves, its ETC application—on an annual basis and line-count data on a quarterly basis. We further propose that competitive ETCs have the option of updating their cost data on a quarterly basis, as do rural incumbents today. Only if the cost data is approved by the relevant state commission or the Commission may the competitive ETC then file the cost data submission with the Universal Service Administrative Company (USAC). We seek comment on these tentative conclusions. Additionally, we invite parties to submit detailed cost data proposals or, in the case of competitive ETCs, actual cost data that would enable us to compare their costs for supported services in high-cost areas to those of incumbent LECs for those same areas. We note that Advocates for Regulatory Action submitted a proposal to replace the identical support rule with wireless carrier actual costs (the WiCAC Proposal), and we seek comment on that proposal.

Methods for Examining Competitive ETC Costs

14. Consistent with our tentative conclusions above, a competitive ETC would be required to report sufficient cost information to allow the Commission or the state commissions to evaluate competitive ETC's costs for purposes of determining high-cost support. We seek comment on the manner in which competitive ETCs should be required to report their costs.

15. *Disaggregation.* Incumbent LECs are required to separate their network costs into components pursuant to part 32 of the Commission's rules. Rural incumbent LECs receive high-cost loop support (HCLS) on a per-line basis based on costs assigned to the common line network component, and non-rural incumbent LECs receive high-cost model support (HCMS) on a per-line basis for the common line, local switching, and local transport network components. Although traditionally we have not regulated the manner in which non-dominant carriers record their costs and revenues, we seek comment here on whether we should require competitive ETCs seeking high-cost support to separate costs into network components in a similar manner, so that their costs can be compared to the incumbent LECs' cost benchmarks for purposes of determining whether competitive ETCs qualify for high-cost support. We further seek comment on whether the Commission should develop a system of accounts for competitive ETCs, including wireless carriers, that mirror the part 32 rules applicable to incumbent LECs. For example, the WiCAC Proposal would utilize 23 specific part 32 accounts to calculate wireless competitive ETC costs. We seek comment on the WiCAC Proposal's use of part 32 accounts specifically to determine wireless competitive ETC costs. We also seek comment generally on other possible methods of identifying the network components and associated costs in a wireless network that are equivalent to a wireline carrier's local loop, switching, and transport components. We also seek comment on whether, if we require disaggregation of costs into network components, competitive ETCs should be able to recover costs for different network components for non-rural service areas than for rural service areas. Finally, we seek comment on whether the Commission should consider any limitations on the total per-line support available to ETCs in a designated area.

16. *Geographic Disaggregation.* We further seek comment on whether, because competitive ETCs will, in general, operate in multiple study areas of incumbent carriers, it will be necessary to disaggregate each competitive ETC's cost by relevant competitive ETC service area, and by the relevant incumbent LEC study area, wire center, or disaggregation zone. We seek comment on whether the default methodology for such geographic disaggregation should be to allocate costs (total or by individual network component) in proportion to the active telephone numbers employed or the number of customers served in each study area. As an alternative, if a competitive ETC can demonstrate that it has maintained separate cost accounts by individual study area, then these accounts can be used to report cost for each study area individually. We seek comment on these issues. We also seek comment on how to best ensure that a competitive ETC does not inflate the costs being allocated to high-cost areas as compared to lower cost areas for which the competitive ETC may not be seeking support. For example, should we require that a competitive ETC identify total costs for all study areas or wire centers as well as the specific costs which the competitive ETC is associating with the study or services areas or wire centers for which it is seeking support?

17. *Wireless-Specific Costs.* We tentatively conclude that wireless spectrum costs should be included in high-cost support cost submissions only to the extent that the competitive ETC actually paid for the spectrum, either

through an auction or by purchasing it on the open market. We also tentatively conclude that a carrier should not be able to assign a market value or opportunity costs to spectrum. Thus, a wireless provider that obtained spectrum at auction would be able to include the price it paid for the spectrum at auction, but if a carrier obtained its spectrum through a lottery, it would not be able to recover any costs for the spectrum from the high-cost universal service mechanisms. Further, we tentatively conclude that wireless handsets should not be treated as an allowed expense, both because they are more akin to traditional customer-owned telephones in a wireline network than to the network interface device, and because the handsets are purchased by subscribers rather than leased to customers by carriers. We seek comment on these tentative conclusions.

Cost Reporting Requirements

18. To aid the Commission and state commissions in their review of competitive ETC cost submissions, we propose a general set of rules to govern the cost data submitted by competitive ETCs. We tentatively conclude that the competitive ETCs should use Generally Accepted Accounting Principles (GAAP) and, with the exceptions discussed below, the accounting methodologies should be the same as those used to provide information about the company's performance to external parties, such as investors and creditors. The cost of capital should be assumed to be 11.25 percent, which is the average cost of capital used in the Commission's forward-looking model and in other regulatory proceedings. Depreciation expense should be computed in a manner consistent with GAAP, and, in addition, the same depreciation schedules used by the competitive ETC in any other financial reports must be used for purposes of determining total network cost for universal service support purposes. Operating and maintenance expense should be based on actual expenses incurred. The allocation for corporate overhead should be comparable to the limitations imposed on rural and non-rural carriers. Specifically, for rural carriers the amount of corporate operations expenses included in determining high-cost loop support is the lesser of actual expenses or the amount calculated under the formulas in § 36.622(a)(4) of the Commission's rules. 47 CFR 36.622(a)(4). For non-rural carriers, the input value for common support services expenses is $7.32 per line, per month. Consistent with the approach under the HCMS rules, corporate operations expenses for competitive ETCs serving non-rural study areas would be the lesser of actual expenses or $7.32 per line, per month. Further, any costs not kept in separate books of account should be identified and allocated to the appropriate study area based on active telephone numbers employed or the number of customers served. All elements of the cost report will be subject to audit. We seek comment on these observations, proposals, and tentative conclusions.

19. It may be necessary to adopt additional requirements concerning the manner in which competitive ETCs are allowed to report their costs. For example, although spectrum acquired through an auction or purchased on the open market may be a legitimate business expense, it is not clear that we should allow carriers to earn a return of 11.25 percent on these investments in perpetuity if spectrum costs are not depreciated. In addition to those issues identified above, other issues may arise due to fundamental differences between wireline and wireless network design. We seek comment on these issues. We also seek comment on whether we should adopt any additional requirements on the competitive ETC cost submissions.

Calculation of Support

20. As noted above, we seek comment on whether a competitive ETC should receive high-cost universal service support based on its own costs by applying the same benchmarks that are applied to the incumbent LEC's costs to determine its support. For example, in the case of a competitive ETC providing service in a non-rural study area, a cost per line would be developed, which would be compared to the benchmark threshold for support calculated by the High-Cost Proxy Model. For competitive ETCs providing service to rural study areas, a cost per line would be developed for each competitive ETC for each incumbent study area that it serves. Support could be determined by comparing the competitive ETC's cost per loop incurred to provide the supported services to the national average cost per loop developed by the National Exchange Carrier Association (NECA) pursuant to § 36.613 of the Commission's rules, as adjusted to accommodate the cap on incumbent high-cost loop support. 47 CFR 36.613. We seek comment on this methodology and other possible methodologies for providing support to competitive ETCs serving rural areas. Similarly, we seek comment on a methodology for developing support based on wireless costs for competitive ETCs serving non-rural areas. We also seek comment on whether we should develop a method of estimating wireless competitive ETCs' forward-looking economic costs analogous to the High-Cost Proxy Model the Commission currently uses to calculate HCMS.

21. HCLS and HCMS both are calculated in terms of per-line support. Because a competitive ETC may have few or no lines when it first receives its ETC designation, performing a calculation of per-line support at the initial time of market entry likely would result in a considerable upward bias in the resulting support amount. We therefore seek comment on whether a competitive ETC should be required to project its subscribership for some future point in time when performing its cost submissions. To the extent that we require such subscribership projections, we seek comment on how far into the future a competitive ETC should be required to project (e.g., 3 years, 5 years). We also seek comment on whether, and when, it would be appropriate to switch from projected future subscribership to actual subscribership. Further, for wireless ETCs, we seek comment on whether subscribership should be based on the number of handsets or on some other statistic, such as individual billing accounts.

22. We also seek comment on whether the Commission should examine wireless competitive ETC costs independently from wireline LEC costs for purposes of determining high-cost support. Wireless networks may be very different from wireline networks, potentially resulting in very different costs. We seek comment on methods for reviewing and determining wireless high-cost support on a separate basis from the existing wireline mechanisms, and whether adopting such a separate wireless high-cost support mechanism comports with the goal of competitive neutrality.

23. We tentatively conclude that competitive ETCs should no longer receive Interstate Access Support (IAS) and Interstate Common Line Support (ICLS). IAS and ICLS were created by the Commission in order to maintain the Commission's cap on subscriber line charge (SLC) rates that incumbent LECs may charge end users, while eliminating the implicit support found in common line access charges, imposed by incumbent LECs on interexchange carriers, that previously preserved the lower SLC rates. Some parties previously have argued that, because competitive ETCs' rates generally are not regulated and they are not subject to SLC caps, they are able to recover their

revenues from end users and have no need to recover additional interstate revenues from access charges or from universal service, and therefore should not be eligible for support under IAS or ICLS. We tentatively conclude that permitting competitive ETCs to receive IAS or ICLS is inconsistent with how competitive ETCs recover their costs or set rates. We seek comment on these tentative conclusions.

24. Similarly, we seek comment on whether competitive ETCs should no longer receive Local Switching Support (LSS). The Commission created LSS in the *First Report and Order* by removing the existing Dial Equipment Minutes weighting subsidy from the access rate structure and, instead, providing carriers explicit support from the universal service fund. LSS therefore includes a number of assumptions regarding switching costs, such as the economies of scope and scale, that are not likely to be accurate for competitive ETCs. We seek comment on whether LSS should no longer be available to competitive ETCs. Accordingly, if competitive ETCs no longer receive IAS, ICLS, and LSS, competitive ETCs would be permitted to receive high-cost support only for their local loop-equivalent costs, to the extent such costs can be shown to be high-cost. We seek comment on whether to limit competitive ETC support in this manner.

Ceiling on Competitive ETC Per-Line Support

25. We seek comment on whether we should establish a ceiling on the per-line high-cost support that a competitive ETC may receive. An incumbent LEC's HCMS is limited by the forward-looking estimated costs produced by the model, even if the incumbent LEC's actual costs are higher. For competitive ETCs providing service in non-rural study areas, we seek comment on setting the ceiling at the per-line HCMS that the incumbent LEC receives in a particular wire center. For competitive ETCs providing service in rural areas, we seek comment on setting the ceiling at the amount that the incumbent LEC receives from HCLS or, in the alternative, at the sum of the per-line HCLS and LSS that the incumbent receives. Adopting a ceiling for competitive ETCs at the level of incumbent LEC support could avoid rewarding competitive ETCs for being inefficient and reduce incentives for competitive ETCs to inflate their costs. We seek comment on this analysis, as well as on whether there are any other approaches for adopting a ceiling for competitive ETC funding.

Other Issues

26. We also seek comment regarding the sufficiency of the Commission's existing use certifications with respect to competitive ETCs. Section 254(e) of the Act requires that ''[a] carrier that receives [universal service support] shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'' Currently, the Commission requires each state to file an annual certification stating that all federal high-cost universal service support provided to LECs or competitive ETCs within the state will be used only for the purposes for which the support is intended. The Commission also requires that each LEC or competitive ETC receiving IAS or ICLS must file a certification that the high-cost support received pursuant to those mechanisms will be used for the intended purpose. Some parties contend, however, that wireless competitive ETCs are not using their universal service support to promote universal service goals. We seek comment on whether these certifications, as well as the Commission's rules requiring competitive ETCs to submit five-year build out plans (beginning October 1, 2006), provide sufficient protection against misuse of universal service support by competitive ETCs. We request that parties arguing that stronger protections are necessary identify with specificity any recommended additional protections.

Procedural Matters

27. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 3, 2008 and reply comments are due on or before May 5, 2008. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the *Federal eRulemaking Portal: http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

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Ex Parte Requirements

28. These matters shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200–1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries

of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Initial Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA, which is set forth below. Comments must be identified as responses to the IRFA and must be filed on or before April 3, 2008. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

30. Over the last few years, the size of the universal service fund has grown rapidly, threatening the sustainability of the fund. This growth has been driven largely by the increase in high-cost universal service support for competitive eligible telecommunications carriers (ETCs). The increase in high-cost support to competitive ETCs is, in turn, a product of the growing number of competitive ETC lines (due to both new designations of competitive ETCs and growth in subscribership to wireless services), the availability of support for multiple lines per household, and the identical support rule, which provides that each competitive ETC receives the same per-line support amount that the incumbent local exchange carrier (LEC) receives. In the NPRM, the Commission tentatively concludes that the identical support rule should be eliminated because it bears no relationship to the amount of money competitive ETCs have invested in rural and other high-cost areas of the country. The Commission seeks comment on its tentative conclusion to provide support based on a competitive ETC's own costs as a means of constraining the growth of the universal service fund and providing appropriate investment incentives for competitive ETCs.

Legal Basis

31. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 4(j), 201 through 205, 214, 254, and 403 of the Communications Act of 1934, as amended, and §§ 1.1, 1.411 through 1.419, and 1.1200 through 1.1216 of the Commission's rules. 47 U.S.C. 151, 152, 154(i) through (j), 201 through 205, 214, 254, 403; 47 CFR 1.1, 1.411 through 1.419, 1.1200 through 1.1216.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

32. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules, if adopted. 5 U.S.C. 604(a)(3). The RFA generally defines the term ''small entity,'' 5 U.S.C. 601(6), as having the same meaning as the terms ''small business,'' 5 U.S.C. 601(3), ''small organization,'' 5 U.S.C. 601(4), and ''small governmental jurisdiction.'' 5 U.S.C. 601(3). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. 5 U.S.C. 601(3). Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 2002, there were approximately 1.6 million small organizations.

33. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. 13 CFR 121.201. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

Wireline Carriers and Service Providers

34. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

35. *Incumbent LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent LECs. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201. According to Commission data, 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees, and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

36. *Competitive LECs, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201. According to Commission data, 859 carriers reported that they were engaged in the provision of either competitive LEC or CAP services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees, and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are

''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that most competitive LECs, CAPs, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action.

Wireless Carriers and Service Providers

37. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' 13 CFR 121.201. Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

38. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. 13 CFR 121.201. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 221 of these are small under the SBA small business size standard.

Satellite Service Providers

39. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

40. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

41. This NPRM seeks comment on whether to calculate support for competitive ETCs based on their own costs. If the Commission ultimately adopts such a method for determining high-cost support for competitive ETCs, it will likely require competitive ETCs to begin recording and reporting their cost data in order to receive high-cost support. Specifically, the NPRM seeks comment on how such costs should be identified and reported, and proposes that the costs must be reported to the Commission or the relevant state authority for approval before submission to the universal service administrator for use in calculating and disbursing support.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

42. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities. *See* 5 U.S.C. 603(c).

43. This NPRM seeks comment generally on how competitive ETCs should identify and report their costs and how to calculate their high-cost universal service support. Furthermore, the NPRM specifically seeks comment on whether less stringent cost accounting requirements should apply to smaller competitive ETCs. The NPRM seeks comment on whether the methods for determining competitive ETC costs discussed therein would significantly economically affect smaller competitive ETCs. If so, the NPRM seeks comment on alternative methods for smaller competitive ETCs to submit information that would allow the Commission and the state commissions adequately to assess these companies' costs for purposes of determining high-cost support. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding. Moreover, the NPRM seeks comment on whether to eliminate or retain the existing identical support rule, but tentatively concludes that the existing rule threatens the sufficiency of the universal service fund. The NPRM seeks comment on whether replacing the existing rule with a support mechanism that provides support to competitive ETCs based on their own costs may have a significant economic impact on some competitive ETCs, and, if so, seeks comment on alternative methods for smaller competitive ETCs to report their costs to the Commission and the state commissions.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

44. None.

Ordering Clauses

45. Accordingly, *It is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201–205, 214, 254, 403 and §§ 1.1, 1.411–1.419, and 1.1200–1.1216 of the Commission's rules, 47 CFR 1.1, 1.411–1.419, 1.1200–1.1216, this Notice of Proposed Rulemaking is adopted.

46. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–4148 Filed 3–3–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 36, 54 and 63

[WC Docket No. 05–337; CC Docket No. 96–45; FCC 08–22]

High-Cost Universal Service Support; Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on the *Recommended Decision* of the Federal-State Joint Board on Universal Service, released on November 20, 2007, regarding comprehensive reform of high-cost universal service. We also incorporate by reference the *Identical Support NPRM* and the *Reverse Auctions NPRM* into this NPRM. In addition, we will incorporate the records developed in response to those two items into this proceeding.

DATES: Comments are due on or before April 3, 2008 and reply comments are due on or before May 5, 2008.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–337 and CC Docket No. 96–45, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.

• *E-mail: ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Include the docket number in the subject line of the message.

• *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ted Burmeister or Katie King, Wireline Competition Bureau, Telecommunications Access Policy Division, 202–418–7400 or TTY: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in WC Docket No. 05–337, CC Docket No. 96–45, FCC 08–22, adopted January 16, 2008, and released January 29, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554.

The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''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).

Synopsis of the Notice of Proposed Rulemaking

Introduction

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on ways to reform the high-cost universal service program. Specifically, we seek comment on the recommendation of the Federal-State Joint Board on Universal Service (Joint Board) regarding comprehensive reform of high-cost universal service support. *Federal-State Joint Board on Universal Service,* Recommended Decision, 22 FCC Rcd 20477 (2007) (*Recommended Decision*). We also incorporate into this NPRM the following two Notices of Proposed Rulemaking: (1) The Notice of Proposed Rulemaking released by the Commission on January 29, 2008, which seeks comment on the Commission's rules governing the amount of high-cost universal service support provided to eligible telecommunications carriers (ETCs), including elimination of the ''identical support rule;'' and (2) the Notice of Proposed Rulemaking released by the Commission on January 29, 2008, which seeks comment on whether and how to implement reverse auctions (a form of competitive bidding) as the disbursement mechanism for determining the amount of high-cost universal service support for ETCs serving rural, insular, and high-cost areas. *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* Notice of Proposed Rulemaking, FCC 08–4 (rel. Jan. 29, 2008) (*Identical Support Rule NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* Notice of Proposed Rulemaking, FCC 08–5 (rel. Jan. 29, 2008) (*Reverse Auctions NPRM*). We also will incorporate the records developed in response to those NPRMs into this proceeding. We note, however, that such incorporation of these two NPRMs does not change or otherwise affect, and we expressly preserve, the positions of the Commission members with regard to those particular NPRMs and the Joint Board's recommendation.

Background

2. In the Telecommunications Act of 1996 (1996 Act), Congress sought to preserve and advance universal service while, at the same time, opening all telecommunications markets to competition. Telecommunications Act of 1996, Public Law 104–104 (1996). Section 254(b) of the Act, which was added by the 1996 Act, directs the Joint Board and the Commission to base policies for the preservation and advancement of universal service on

several general principles, plus other principles that the Commission may establish. 47 U.S.C. 254(b). Among other things, there should be specific, predictable, and sufficient federal and state universal service support mechanisms; quality services should be available at just, reasonable, and affordable rates; and consumers in all regions of the nation should have access to telecommunications services that are reasonably comparable to those services provided in urban areas at reasonably comparable rates. 47 U.S.C. 254(b)(1), (3), (5). Section 254(e) of the Act provides that only ETCs designated under section 214(e) shall be eligible to receive federal universal service support, and that any such support should be explicit and sufficient to achieve the purposes of that section. 47 U.S.C. 214(e), 254(e).

3. In 2002, the Commission asked the Joint Board to review certain of the Commission's rules related to the high-cost universal service support mechanisms. *Federal-State Joint Board on Universal Service,* 67 FR 70703, November 26, 2002. Among other things, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC provides service. In response, the Joint Board made a number of recommendations concerning the designation of ETCs in high-cost areas, but declined to recommend that the Commission modify the basis of support (i.e., the methodology used to calculate support) in study areas with multiple ETCs. *Federal-State Joint Board on Universal Service,* Recommended Decision, 19 FCC Rcd 4257 (2004). Instead, the Joint Board recommended that it and the Commission continue to consider possible modifications to the basis of support for competitive ETCs as part of an overall review of the high-cost support mechanisms for rural and non-rural carriers.

4. In 2004, the Commission asked the Joint Board to review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the plan adopted in the *Rural Task Force Order. Federal-State Joint Board on Universal Service,* Order, 69 FR 48232, August 9, 2004 (*Rural Referral Order*); *Rural Task Force Order,* 66 FR 30080, June 5, 2001. In August 2004, the Joint Board sought comment on issues the Commission referred to it related to the high-cost universal service support mechanisms for rural carriers. *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support,* Public Notice, 69 FR 53917, September 3, 2004. The Joint Board also specifically sought comment on the methodology for calculating support for ETCs in competitive study areas. Since that time, the Joint Board has sought comment on a variety of specific proposals for addressing the issues of universal service support for rural carriers and the basis of support for competitive ETCs, including proposals developed by members and staff of the Joint Board, as well as the use of reverse auctions (competitive bidding) to determine high-cost universal service funding to ETCs. *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support,* 20 FCC Rcd 14267 (2005); *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support,* 71 FR 50420, August 25, 2006.

5. On May 1, 2007, the Joint Board recommended that the Commission adopt an interim cap on high-cost universal service support provided to competitive ETCs to stem the dramatic growth in high-cost support. *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* Recommended Decision, 22 FCC Rcd 8998 (2007). Specifically, the Joint Board recommended that the Commission cap the amount of support that competitive ETCs may receive for each state based on the average level of competitive ETC support distributed in that state in 2006. The Joint Board further recommended that the interim cap apply until one year from the date that the Joint Board makes its recommendation regarding comprehensive and fundamental high-cost universal service reform. The Joint Board also recommended that the Commission consider abandoning or modifying the so-called ''identical support'' rule in any reform it ultimately adopts. On May 14, 2007, the Commission released a Notice of Proposed Rulemaking, seeking comment on the Joint Board's recommendation regarding the interim cap on competitive ETC support. *Federal-State Joint Board on Universal Service,* Notice of Proposed Rulemaking, 22 FCC Rcd 9705 (2007).

6. In a companion Public Notice, released May 1, 2007, the Joint Board sought comment on various proposals to reform the high-cost universal service support mechanisms. *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform,* Public Notice, 22 FCC Rcd 9023 (2007). Specifically the Joint Board sought comment on the following issues and proposals: (1) The use of reverse auctions to determine high-cost universal service support; (2) the use of GIS technology and network cost modeling to better calculate and target support at more granular levels; (3) disaggregation of support; (4) the methodology for calculating support for competitive ETCs; and (5) whether universal service funding should be used to promote broadband deployment.

7. Finally, the Commission recently adopted two Notices of Proposed Rulemaking, which seek comment on specific high-cost universal service comprehensive reform proposals. First, on January 9, 2008, the Commission adopted the *Identical Support NPRM,* which seeks comment on the Commission's rules governing the amount of high-cost universal service support provided to ETCs and tentatively concludes that the Commission should eliminate the ''identical support'' rule. *Identical Support Rule NPRM,* FCC 08–4. Second, on January 9, 2008, the Commission adopted the *Reverse Auctions NPRM,* which tentatively concludes that reverse auctions should be used as the disbursement mechanism to determine the amount of high-cost universal service for ETCs serving rural, insular, and high-cost areas and seeks comment on how to implement reverse auctions for this purpose. *Reverse Auctions NPRM,* FCC 08–5.

Discussion

8. On November 20, 2007, the Federal-State Joint Board on Universal Service issued its *Recommended Decision* regarding comprehensive reform of high-cost universal service. *Recommended Decision,* 22 FCC Rcd 20477 (2007). In this NPRM, we seek comment on the Joint Board's recommendations contained in the *Recommended Decision.*

9. We also incorporate by reference the *Identical Support NPRM* and the *Reverse Auctions NPRM* into this NPRM. In addition, we will incorporate the records developed in response to those two items into this proceeding. We thus request that parties who file comments in response to either or both of those items include those comments as part of their filings in response to this NPRM. We note, however, that such incorporation of these two NPRMs does not change or otherwise affect, and we expressly preserve, the positions of the Commission members with regard to

those particular NPRMs and the Joint Board's recommendation.

Procedural Matters

10. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 3, 2008 and reply comments are due on or before May 5, 2008. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Ex Parte Requirements

11. These matters shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 through 1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Initial Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA, which is set forth below. Comments must be identified as responses to the IRFA and must be filed on or before April 3, 2008. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

13. In the Telecommunications Act of 1996 (1996 Act), Congress sought to preserve and advance universal service while, at the same time, opening all telecommunications markets to competition. Telecommunications Act of 1996, Public Law 104–104 (1996). Section 254(b) of the Act directs the Federal-State Joint Board on Universal Service (Joint Board) and the Commission to base policies for the preservation and advancement of universal service on several general principles, plus other principles that the Commission may establish. Section 254(e) provides that only eligible telecommunications carriers (ETCs) designated under section 214(e) shall be eligible to receive federal universal service support, and any such support should be explicit and sufficient to achieve the purposes of that section.

14. In this NPRM, we seek comment on ways to reform the high-cost universal service program. Specifically, we seek comment on the recommendation of the Joint Board regarding comprehensive reform of high-cost universal service support. *Recommended Decision,* 22 FCC Rcd 20477 (2007). We also incorporate into this NPRM the following two Notices of Proposed Rulemaking: (1) The Notice of Proposed Rulemaking released by the Commission on January 29, 2008. which seeks comment on the Commission's rules governing the amount of high-cost universal service support provided to eligible telecommunications carriers (ETCs), including elimination of the ''identical support rule;'' and (2) the Notice of Proposed Rulemaking released by the Commission on January 29, 2008, which seeks comment on whether and how to implement reverse auctions (a form of competitive bidding) as the disbursement mechanism for determining the amount of high-cost universal service support for ETCs serving rural, insular, and high-cost areas. *Identical Support Rule NPRM,* FCC 08–4; *Reverse Auctions NPRM,* FCC 08–5. We also will incorporate the records developed in response to those Notices of Proposed Rulemaking into this proceeding. We note, however, that such incorporation of these two NPRMs does not change or otherwise affect, and we expressly preserve, the positions of the Commission members with regard to those particular NPRMs and the Joint Board's recommendation.

Legal Basis

15. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 4(j), 201 through 205, 214, 254, and 403 of the Communications Act of 1934, as amended, and §§ 1.1, 1.411 through 1.419, and 1.1200 through 1.1216 of the Commission's rules. 47 U.S.C. 151, 152, 154(i) through (j), 201 through 205, 214, 254, 403; 47 CFR 1.1, 1.411 through 1.419, 1.1200 through 1.1216.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

16. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules, if adopted. 5 U.S.C. 604(a)(3). The RFA generally defines the term ''small entity,'' 5 U.S.C. 601(6), as having the same meaning as the terms ''small business,'' 5 U.S.C. 601(3), ''small organization,'' 5 U.S.C. 601(4), and ''small governmental jurisdiction.'' 5 U.S.C. 601(5). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. 5 U.S.C. 601(3). Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 2002, there were approximately 1.6 million small organizations.

17. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. 13 CFR 121.201. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

Wireline Carriers and Service Providers

18. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

19. *Incumbent LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent LECs. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201. According to Commission data, 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees, and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

20. *Competitive LECs, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201. According to Commission data, 859 carriers reported that they were engaged in the provision of either competitive LEC or CAP services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees, and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that most competitive LECs, CAPs, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action.

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21. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' 13 CFR 121.201. Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

22. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. 13 CFR 121.201. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 221 of these are small under the SBA small business size standard.

Satellite Service Providers

23. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both categories, such a business is small if it has $13.5 million or less in average annual receipts. 13 CFR 121.201.

24. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in

providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

25. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

26. This NPRM seeks comment on ways to reform the high-cost universal service program. Specifically, the NPRM seeks comment on the recommendation of the Joint Board regarding comprehensive reform of high-cost universal service support. The Joint Board recommended the creation of three distinct high-cost funds; a broadband fund, a mobility fund, and a provider of last resort fund. If the Commission ultimately adopts the Joint Board's recommendations, new or additional reporting requirements may be required for carriers to receive support under a three-fund approach. Additionally, the NPRM incorporates by reference two NPRMs addressing the adoption of a reverse auctions approach for distributing high-cost support, and the elimination of the identical support rule for competitive eligible telecommunications carriers. Projected reporting, recordkeeping, and other compliance requirements are discussed in the IRFAs of those NPRMs.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

27. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities. 5 U.S.C. 603(c).

28. This NPRM seeks comment on ways to reform the high-cost universal service program, including recommendations issued by the Joint Board. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding. To the degree that the other NPRMs that the NPRM includes by reference offer alternatives that may minimize the significant economic impact on small entities, those alternatives will be considered as well.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

29. None.

Ordering Clauses

30. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201 through 205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) through (j), 201 through 205, 214, 254, 403 and §§ 1.1, 1.411 through 1.419, and 1.1200 through 1.1216 of the Commission's rules, 47 CFR 1.1, 1.411 through 1.419, 1.1200 through 1.1216, this Notice of Proposed Rulemaking Is Adopted.

31. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–4143 Filed 3–3–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 63

[WC Docket No. 05–337; CC Docket No. 96–45; FCC 08–5]

High-Cost Universal Service Support; Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on the merits of using reverse auctions (a form of competitive bidding) to determine the amount of high-cost universal service support provided to eligible telecommunications carriers serving rural, insular, and high-cost areas.

DATES: Comments are due on or before April 3, 2008 and reply comments are due on or before May 5, 2008.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–337 and CC Docket No. 96–45, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Include the docket number in the subject line of the message.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20544.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov* or *phone:* 202–418–0530 or *TTY:* 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Katie King, Wireline Competition Bureau, Telecommunications Access Policy Division, 202–418–7400 or TTY: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 05–337, CC Docket No. 96–45, FCC 08–5, adopted January 9, 2008, and released January 29, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554.

The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

Initial Paperwork Reduction Act of 1995 Analysis:

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''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).

Synopsis of the Notice of Proposed Rulemaking

Introduction

1. In this NPRM, we seek comment on the merits of using reverse auctions (a form of competitive bidding) to determine the amount of high-cost universal service support provided to eligible telecommunications carriers (ETCs) serving rural, insular, and high-cost areas. As discussed below, in a reverse auction, support generally would be determined by the lowest bid to serve the auctioned area. We tentatively conclude that reverse auctions offer several potential advantages over current high-cost support distribution mechanisms, and that the Commission should develop an auction mechanism to determine high-cost universal service support. We seek comment in this NPRM on a number of specific issues regarding auctions and auction design that must be resolved in order for the Commission to implement an auction mechanism.

Background

2. In the Telecommunications Act of 1996 (1996 Act), Congress sought to preserve and advance universal service while, at the same time, opening all telecommunications markets to competition. Public Law 104–104. Section 254(b) of the Act, which was added by the 1996 Act, directs the Federal-State Joint Board on Universal Service (Joint Board) and the Commission to base policies for the preservation and advancement of universal service on several general principles, plus other principles that the Commission may establish. Among other things, there should be specific, predictable, and sufficient federal and state universal service support mechanisms; quality services should be available at just, reasonable, and affordable rates; and consumers in all regions of the nation should have access to telecommunications services that are reasonably comparable to those services provided in urban areas at reasonably comparable rates. 47 U.S.C. 254(b)(1), (3), (5). Section 254(e) of the Act provides that only ETCs designated under section 214(e) shall be eligible to receive federal universal service support, and that any such support should be explicit and sufficient to achieve the purposes of that section.

3. In the *Universal Service First Report and Order*, the Commission recognized certain advantages of using competitive bidding to determine high-cost universal service support. 62 FR 32862, June 17, 1997. First, ''a compelling reason to use competitive bidding is its potential as a market-based approach to determining universal service support, if any, for any given area.'' Second, ''by encouraging more efficient carriers to submit bids reflecting their lower costs, another advantage of a properly structured competitive bidding system would be its ability to reduce the amount of support needed for universal service.'' The record at the time, however, was insufficient to support adoption of a competitive bidding mechanism. Moreover, the Commission found it unlikely that competitive bidding mechanisms would be useful at that time because of the expectation that there would be no competition in a significant number of rural, insular, or high-cost areas in the near future. Nonetheless, the Commission found that competitive bidding warranted further consideration.

4. More recently, there has been renewed interest in using competitive bidding to determine high-cost universal service support. The Joint Board currently is reviewing the Commission's rules relating to high-cost universal service support in service areas in which competitive ETCs receive support and high-cost universal service support for rural carriers. *Federal-State Joint Board on Universal Service*, 67 FR 70703, November 26, 2002 (*ETC/Portability Referral Order*); *Federal-State Joint Board on Universal Service*, 69 FR 48232, August 9, 2004 (*Rural Referral Order*). In August 2006, the Joint Board sought comment on the merits of using auctions to determine high-cost universal service support. *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, 71 FR 50420, August 25, 2006. The Joint Board also sought comment on auctions in the ETC/Portability proceeding. *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, 68 FR 10429, March 5, 2003. In February 2007, the Joint Board held an *en banc* hearing to discuss high-cost universal service support in rural areas, including the use of reverse auctions to determine support. *Federal-State Joint Board on Universal Service to Hold En Banc Hearing on High-Cost Universal Service Support in Areas Served by Rural Carriers*, 22 FCC Rcd 2545 (2007). In his opening remarks, Chairman Kevin Martin explained that ''reverse auctions could provide a technologically and competitively neutral means of controlling fund growth and ensuring a move to most efficient technology over time.'' In a public notice, released May 1, 2007, the Joint Board sought comment on various proposals for long term, comprehensive reform of the high-cost universal service support mechanisms, including the use of reverse auctions. *Federal-State Joint Board on Universal Service Seeks Comment on Long Term Comprehensive High-Cost Universal Service Reform*, 22 FCC Rcd 9023 (2007). The Joint Board also recommended that, as an interim measure, the Commission adopt a cap on competitive ETC support. *Recommended Decision*, 22 FCC Rcd 8998 (2007). The specific auction proposals filed during the course of this proceeding are briefly described below.

5. *CTIA Proposal.* In response to the *2006 Joint Board Public Notice*, CTIA—The Wireless Association® (CTIA) proposed a ''winner-gets-more'' reverse auction structure in which wireline and wireless ETCs would compete in the same auction. Under this proposal, the

winning bidder would receive the level of support it bid, and other auction participants would receive some lesser level of support. CTIA suggests two possible methods of calculating support for a non-winning bidder: (1) A percentage reduction in payment based on the difference between its bid and the winning bid; and (2) a percentage reduction in payment based on the difference between its bid and the winning bid, but also weighted by the share of customers of the winning bidder. CTIA supports the use of small areas, such as counties, as the geographic areas on which providers would bid.

6. *Verizon Proposal.* On February 9, 2007, Verizon proposed implementing competitive bidding on a limited basis, with the possibility of extending the use of auctions more widely after the Commission assesses the results. Under Verizon's proposal, the Commission would introduce auctions in areas in which multiple wireless competitive ETCs currently receive support to select a single winning wireless provider to receive federal high-cost support in that area. Once these auctions were completed, a separate set of auctions would be held in areas where there is at least one wireline competitive ETC. Both the incumbent local exchange carrier (LEC) and any wireline competitive ETCs would participate, and the auction would select a single wireline provider to receive high-cost support in that area. After reviewing its experience with the separate wireless and wireline auctions, the Commission could then consider holding a general auction in any area where there is a competitive ETC. Both wireline and wireless ETCs would participate, and the general auction would select a single ETC to receive the support determined by its bid. The Commission also could consider using the results of the auctions to adjust support of ETCs receiving support not yet determined by an auction.

7. Verizon also proposes an auction design that uses wire centers, at least initially, as the geographic areas for which ''combinatorial'' auctions would be held. This type of auction allows bidders flexibility to submit bids for individual wire centers, or bids for packages of wire centers. Bids would be for a flat amount of subsidy for a given area, or package of areas. The reserve amount would be based on current high-cost support amounts and would ensure that the support determined by the auction is no greater than the amount of support provided prior to the auction.

8. *Alltel Proposal.* On February 16, 2007, Alltel proposed a reverse auction pilot program that would target additional funds to promote broadband deployment in unserved or underserved rural areas. In unserved or underserved zip code areas, any ETC could submit a bid for the minimum amount of universal service per line that it would need to make available broadband service, as well as the basic services currently supported by the high-cost program, to a minimum percentage of households in the zip code area within a specified period of time. In areas where an ETC can satisfy this standard without additional support beyond that already available under the existing high-cost program, Alltel claims that the winning bid might be zero. Each participating ETC would receive per-line funding only to the extent it provides broadband, as well as currently supported services to a customer line. The participant offering the lowest bid would receive the full bid amount for each broadband line it provides during the duration of the service term (e.g., five years). All other ETCs that commit to meeting the same broadband build-out requirements would also receive support, but at a slightly lower per-line rate than the winning bidder.

9. Alltel recommends that the bidding process be conducted in a manner similar to that used for spectrum auctions: A multiple round, combinatorial auction, in which participants can bid for any number of zip code areas. The reserve price in each zip code area would be set based on the current level of high-cost support disbursed to ETCs in the area, increased by a certain percentage for the presumably higher cost of broadband deployment. Alltel suggests, for example, establishing a maximum bid amount so that the total per-line support would not increase by more than 50 percent or 100 percent in any area where high-cost funds are already being disbursed to one or more ETCs.

Discussion

10. We seek comment generally on the advantages of using a reverse auction mechanism to determine the amount of high-cost universal service support distributed to ETCs. Technology and the marketplace have changed considerably since the Commission in 1997 found that competitive bidding mechanisms were unlikely to be useful in rural, insular, and high-cost areas because of the absence of competition in these markets. Since that time, many carriers, particularly wireless carriers, have become ETCs and receive support for serving high-cost areas. As a result of the policies and framework the Commission adopted at that time, the Commission's rules now result in subsidizing multiple competitors to serve areas in which costs may be prohibitively expensive for even one carrier to serve without a subsidy. The increase in the number of ETCs receiving high-cost support over the past several years is placing significant and increasing pressure on the stability of the universal service fund. *Universal Service Contribution Methodology,* 71 FR 38781, July 10, 2006.

11. In a reverse auction, support generally would be determined by the lowest bid to serve the auctioned area. Auctions have potential merit in that they allow direct market signals to be used as a supplement to, and possible replacement of, cost estimates made from either historical cost accounting data or forward-looking cost models, as is done under the current high-cost support programs. In an auction, bids would reflect each bidding ETC's cost estimates for serving the relevant geographic area. If a sufficient number of bidders compete in the auction, the winning bid might be close to the minimum level of subsidy required to achieve the desired universal service goals. In contrast, a support mechanism based on either a carrier's embedded costs or on a forward-looking cost model provides no incentives for ETCs to provide supported services at the minimum possible cost. In addition, an auction could provide a fair and efficient means of eliminating the subsidization of multiple ETCs in a given region. We tentatively conclude that reverse auctions offer several potential advantages over current high-cost support distribution mechanisms, and that the Commission should develop an auction mechanism to determine high-cost universal service support. There are a number of detailed issues regarding auctions and auction design that must be resolved in order for the Commission to implement an auction mechanism, however. We seek comment below on these specific issues.

Eligibility Requirements

12. We seek comment on eligibility requirements for bidders participating in reverse auctions. Section 254(e) states, in relevant part: ''only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.'' Therefore, we tentatively conclude that a bidder must hold an ETC designation covering the relevant geographic area prior to participating in an auction to determine high-cost support for that geographic area.

Single Winner Versus Multiple Winners

13. We seek comment on whether universal service support auctions should award high-cost support to a single winner or to multiple winners. Should only the carrier submitting the lowest bid be allowed to receive the subsidy? Should all ETCs participating in the auction receive support, and if so, should it be the same level of support, or different amounts of support as suggested in the CTIA and Alltel proposals? We ask commenters that favor multiple-winner auctions in which different amounts of support go to different bidders to explain how the different levels of support would be determined. Alternatively, should there be a fixed number of winners greater than one? If there are a fixed number of winners receiving support, should the winning bidders receive the same amount of support (i.e., the same amount as the lowest bidder), or should the lowest bidder receive more?

14. We seek comment on the advantages and disadvantages of a single-winner auction versus a multiple-winner auction format. As mentioned above, if only one bidder receives support, an auction could provide a fair and efficient means of eliminating the subsidization of multiple ETCs in a given region, thereby ceasing the uneconomic practice of subsidizing multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. We expect that using single-winner auctions would result in less overall support than multiple-winner auctions. For example, if support were to be distributed as a fixed subsidy per geographic area, then an auction with two winners would result in twice the support of a single-winner auction. As the number of winners increases, the size of the total subsidy would increase proportionately. We tentatively conclude that this would violate the universal service principle of sufficiency and would be an unacceptable auction format. We therefore tentatively conclude that universal service support auctions should award high-cost support to a single winner.

15. If support is determined on the basis of the number of subscribers served, we similarly would expect total support under a multiple-winner auction to be higher than support under a single-winner auction for several reasons. First, many subscribers may choose to purchase service from multiple ETCs, with the result that such subscribers could indirectly be subsidized multiple times in a multiple-winner auction. Second, a multiple-winner auction would also increase the expected size of the subsidy under most common auction formats. For example, if the size of the subsidy is determined by the lowest bid of a non-winning bidder, the per-carrier subsidy would be expected to rise as the number of winners increased. Third, when the number of winners is large relative to the number of expected bidders, tacit collusion may be facilitated, which would result in less competitive bidding for the required subsidy. Finally, as the number of carriers receiving a subsidy increases, the market share of each subsidized carrier would correspondingly decline. Since it is well established that costs to individual carriers increase as their customer density decreases, we would expect that the underlying costs on which carriers base their bids to increase as the number of winning bidders increased and the individual bidder's expected number of subscribers decreased.

16. Parties have argued that there are benefits to multiple-winner auctions. For example, CTIA argues that single-winner auctions run the risk of eliminating the consumer benefits of a competitive market by discouraging competitive entry during the period the auction winner has the exclusive right to receive support. How would a winner-gets-more auction, as proposed by CTIA, affect the overall level of support? How would the fact that all bidders receive support in a winner-gets-more auction affect the bidder strategies? To what extent should the Commission's universal service policies be directed at promoting competition in rural, high-cost markets? Does the Act require that rural consumers have affordable access to both wireline and wireless services? Would a single-winner auction deny rural consumers affordable access to both wireline and wireless services?

17. Some parties have suggested that the Commission consider having separate auctions for wireless and wireline ETCs, at least initially. For example, Verizon proposes that the Commission initiate the use of auctions in areas in which multiple wireless competitive ETCs receive support. Once these auctions have been completed, the Commission would hold a separate set of auctions in areas where there is an incumbent LEC and at least one wireline competitive ETC. We seek comment on separate wireless and wireline auctions and any other issues relating to single- versus multiple-winner auctions.

Method of Distributing the Subsidy

18. We seek comment on the manner in which a subsidy should be computed and distributed. Specifically, subsidies could potentially be offered as a fixed payment for each geographic area, on the basis of the number of subscribers or households served, or on some combination of these methods. As noted above, a per-area subsidy with multiple winners would result in very large subsidies, and we have tentatively concluded above that this format would not be acceptable. In the case of a single-winner auction, there are advantages to each of the above possible distribution methods. A per-subscriber subsidy provides a financial incentive to serve new customers who might be otherwise unprofitable. A per-area subsidy provides certainty about the total subsidy level. This knowledge may be important to a carrier's decision about whether to make fixed investment to serve an area, and to therefore participate in the auction. The form of the subsidy may also affect the allocation of customers among multiple providers in a multiple-winner auction. If carriers do not all receive the same per-line subsidy, then a given customer may not be served by the lowest cost provider, but instead by a carrier with a higher subsidy. In addressing these issues, commenters should also address the relationship of the subsidy distribution methodology to the statute's universal service principles, including, in particular, the principles that the fund be specific, predictable, and sufficient and that consumers in rural, insular, and high-cost areas have access to services at rates that are comparable to the rates for comparable services in urban areas.

Geographic Areas

19. We seek comment on the appropriate geographic areas for reverse auctions. In most areas of the country, telecommunications services are provided by a wireline incumbent LEC and possibly by one or more competitive ETCs, most of which are wireless carriers. Basing the geographic area on any particular carrier's service area would likely give that carrier an advantage in bidding because competing carriers are unlikely to have the same service footprint.

20. Currently, support is generally based on the wireline incumbent LEC's study area. We seek comment on whether we should use the wireline incumbent LEC's study area as the geographic area on which to base reverse auctions. We note that, in some cases, the wireline incumbent LEC's study area consists of multiple disjointed geographic areas within a state. We seek comment on whether an incumbent LEC's study area that

consists of multiple non-contiguous geographic areas should be broken up at least into its contiguous parts for purposes of the auction, or be required to be auctioned as a single study area. An alternative to the wireline incumbent's study area would be to use the wire centers of the wireline incumbent LEC. What are the advantages and disadvantages of this approach? A third alternative is to use a geographic area that is independent of any carrier's service area, such as zip code, census tract, census block group, county, or metropolitan or rural statistical area (MSA, RSA). One potential advantage of such an approach is that it might better ensure that the auction is competitively and technologically neutral. What are the advantages and disadvantages of using independent geographic units that do not necessarily correspond to any wireline or wireless service area? CTIA contends that larger geographic units, such as MSAs/RSAs, would lead to problems of lack of coverage for many potential bidders. In addition, under CTIA's analysis, geographic areas which correspond to an incumbent LEC's study area (or contiguous portions thereof) might discourage participation in the auction by competitive carriers. Verizon argues that the areas should be small enough to allow the auctions to target support where it is most needed, but not so small as to create unnecessary complexity. Both CTIA and Verizon support using relatively small geographic areas, such as counties or wire centers, respectively. Although defining the relevant region as the incumbent LEC's entire study area might make it difficult for any individual competitive ETC to bid successfully, would the same hold true for incumbent LEC wire centers? Verizon claims that incumbent LEC switches generally have been located in population clusters, and that competitive ETCs similarly have tended to locate their facilities in population clusters even though they may have different network topologies than incumbent LECs. If geographic areas smaller than an incumbent LEC's entire study area are chosen, should the geographic areas nevertheless be defined so that each area is contained within the incumbent's study area, and that the total area of units up for auction completely covers the incumbent LEC's study area? We seek comment on how the size of the geographic area affects the ability of small entities to participate in auctions.

21. The size of the geographic area chosen for auction will also have an effect on the amount of high-cost support. Specifically, a larger geographic area may include subsets of customers that are profitable (either because they live in low-cost areas or because they are likely to purchase related but unsubsidized services such as video or high speed data service). When these areas are included as part of a larger geographic area, the need for an overall subsidy is reduced on a per-customer basis. When smaller units are individually auctioned, there may be fewer profitable customers to offset losses for higher-cost customers, so a higher total subsidy may be required. We seek comment on the trade-offs that may exist between the advantages of small geographic areas in terms of economic efficiency and competitive entry and the potential costs in terms of higher support levels. We tentatively conclude that the wireline incumbent LEC's study area is the appropriate geographic area on which to base reverse auctions, and that further disaggregation is appropriate only if the total support is not increased for the resulting areas, but is capped at the award amount for the original study area. We seek comment on this tentative conclusion, as well as on how one might disaggregate a study area yet ensure the overall support amount does not increase as a result of such disaggregation.

22. We also seek comment on how we would implement different geographic areas for reverse auctions conducted in areas served by rural telephone companies. Section 214(e)(5) of the Act states: ''In the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.'' If we decide to conduct an auction in a geographic area that is different than a rural telephone company's study area, does the Act require us to coordinate with the relevant state commission prior to conducting the auction? If so, we seek comment on issues relating to coordination with state commissions concerning the appropriate geographic areas for reverse auctions in areas served by rural telephone companies.

Universal Service Obligations

23. We seek comment on the extent to which we should define the universal service obligations of the winners of the auctions. Historically, only incumbent LECs received universal service support and had the obligation to serve customers subject to rates and terms specified by state regulatory authorities: so-called ''carrier of last resort'' obligations. Under the framework adopted by Congress in the 1996 Act, although only ETCs are eligible to receive federal universal service support, there may be multiple ETCs in a given area. 47 U.S.C. 214(e)(2), 254(e). In addition, although competitive ETCs do not necessarily have carrier of last resort obligations under state law, they are required to provide the supported services throughout the service area for which the designation is received and to advertise the availability of such services and their rates using media of general distribution. 47 U.S.C. 214(e)(1). Moreover, section 214(e)(3) explicitly authorizes the states, with respect to intrastate services, and the Commission, with respect to interstate services, to order an ETC to provide service to an unserved area.

24. We seek comment on how to ensure the universal availability of services under a reverse auction mechanism. Specifically, how should the carrier of last resort obligations be defined, and on whom should they be imposed? One possibility would be for an incumbent LEC to retain both the carrier of last resort obligation and the full right to subsidy over its entire study or service area unless lower bids were submitted by rival bidders in each of the geographic units up for auction within its overall service area. If lower bids were submitted by rival bidders in all of the geographic units up for auction, then the winning bidder would inherit the carrier of last resort obligations. Related to this, the incumbent LEC could be the only provider to receive a subsidy if rival bidders do not submit bids below the reserve price in each of the geographic units up for auction within its overall service area. Alternatively, both the carrier of last resort obligation and associated subsides could be awarded to the winning bidder in each geographic unit. The definition of the universal service obligation may be inextricably linked to the manner in which reserve prices for a geographic area are determined and to the specific auction format as discussed below. We ask parties to comment specifically on the ways in which these issues are related.

25. We seek comment on several additional issues related to the continued availability of supported services. Should the winner of an auction be allowed to transfer to another ETC at any time the universal service obligations and the related support for any portion of a geographic area acquired through an auction? Currently

the Commission has rules adopted pursuant to section 214 of the Act that address transfer of control and discontinuances. 47 U.S.C. 214; 47 CFR 63.03, 63.04, 63.71. Are these rules adequate or do they need to be modified where a carrier has both universal service obligations and subsidies? Should an existing incumbent LEC be allowed to unilaterally renounce its carrier of last resort obligations by refusing to bid in a subsequent auction? Should states or the Commission establish penalties to be imposed on an ETC that fails to fulfill its universal service obligations in a geographic area that it acquired at auction? If a carrier that has won an auction subsequently declares bankruptcy, what effect will the declaration of bankruptcy have on its universal service obligations and the subsidy that it receives? Do we need to adopt new rules to address this issue?

26. In the *ETC Designation Order,* the Commission adopted additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Act. *Federal-State Joint Board on Universal Service,* 70 FR 29960, May 25, 2005 (*ETC Designation Order*). Section 214(e)(6) of the Act directs the Commission to designate carriers when those carriers are not subject to the jurisdiction of a state commission. 47 U.S.C. 214(e)(6). Specifically, the Commission requires that an ETC applicant demonstrate: (1) A commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act. We seek comment on whether these same requirements and/or any additional requirements should apply to all ETCs winning universal service auctions. Should these requirements apply only to auction winners, or should some or all of the requirements apply to all ETCs participating in universal service auctions? As noted, these requirements currently apply to ETCs designated by the Commission. Should they apply to state-designated ETCs as well?

27. In the *ETC Designation Order*, the Commission also encouraged states to adopt the Commission's requirements for ETC designation, but declined to mandate that state commissions do so. We seek comment on the extent to which states have done so. Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity. Because the *ETC Designation Order* guidelines are not binding upon the states, the Commission rejected arguments suggesting that such guidelines would restrict the lawful rights of states to make ETC designations. The Commission also found that federal guidelines are consistent with the holding of the United States Court of Appeals for the Fifth Circuit that section 214(e) of the Act does not prohibit the states from imposing their own eligibility requirements in addition to those described in section 214(e)(1). *Texas Office of Public Utility Counsel* v. *FCC*, 183 F. 3d 393 (5th Cir. 1999). We seek comment on whether the Commission should condition an auction winner's receipt of federal high-cost support on compliance with additional requirements to ensure that the auction winner has obligations analogous to carrier of last resort obligations. We discuss the Commission's specific ETC requirements and related issues in more detail below.

28. *Commitment and Ability to Provide the Supported Services*. The Commission requires that ETCs must provide service to all customers who make a reasonable request for service. Specifically, when a request comes from a potential customer located within the applicant's licensed service area but outside its existing network coverage, the ETC applicant should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) Modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment. The Commission encouraged states to follow the Joint Board's proposal that any build-out commitments adopted by states be harmonized with any existing policies regarding line extensions and carrier of last resort obligations. We seek comment on what build-out commitments should apply to ETCs participating in and/or winning universal service auctions.

29. The Commission also requires that a competitive ETC applicant submit a five-year plan describing with specificity its proposed improvements or upgrades to its network on a wire center-by-wire center basis throughout its designated service area. The five-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support. This showing must include: (1) How signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation; (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements. We seek comment on whether we should require all ETCs participating in and/or winning universal service auctions to submit similarly detailed five-year plans. If the auction winner's obligation to serve the area is longer or shorter than five years, we tentatively conclude that it would be appropriate to adjust the time period for the plan to coincide with the time period of the obligation. If commenters believe that the requirement to submit five-year build-out plans, or the specific contents of the build-out plans, should be modified, they should explain how.

30. *Local Usage*. The Commission currently requires an ETC applicant to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation, but the Commission declined to adopt a specific local usage threshold in the *ETC Designation Order*. Should we adopt a specific local usage threshold for winners of auctions? Currently, we do not regulate the retail rates of ETCs as a condition of their receiving high-cost support. States generally regulate wireline residential rates for incumbent LECs, but are precluded from regulating wireless rates by section 332(c)(3) of the Act. Wireline rates typically are set on a flat rate basis, whereas rates for wireless service generally are set on the basis of ''buckets of minutes.'' What kind of restrictions on retail pricing, if any, should the Commission place on auction participants in order to ensure rough comparability of pricing plans? For example, if a carrier whose rates are not regulated wins an auction, should it be

required to freeze its retail rates, or agree to increase them subject to a price cap plan already in place within the state? Should the Commission establish a maximum rate for the local usage plan offered by auction bidders or winners?

31. *Equal Access.* Although the Commission does not impose a general equal access requirement on ETC applicants, we require ETC applicants to acknowledge that we may require them to provide equal access to long distance carriers in their designated service area in the event that no other ETC is providing equal access within the service area. The Commission found that, if such circumstances arise, the Commission should consider whether to impose an equal access or similar requirement on a case-by-case basis. We seek comment on whether we should require all ETCs participating in universal service auctions to acknowledge that they may be required to provide equal access in the event that they win the auction.

32. *Ability to Remain Functional in Emergency Situations.* The Commission also requires an ETC applicant to demonstrate its ability to remain functional in emergency situations by demonstrating that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to re-route traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. In addition, ETCs designated by the Commission must certify on an annual basis that they are able to function in emergency situations. We seek comment on whether we should require all ETCs participating in and/or winning universal service auctions to demonstrate their ability to remain functional in emergencies.

33. *Consumer Protection.* The Commission requires a carrier seeking ETC designation to demonstrate its commitment to meeting consumer protection and service quality standards in its application to the Commission. A commitment to comply with CTIA's Consumer Code for Wireless Service currently satisfies this requirement for a wireless ETC applicant seeking designation before the Commission. We seek comment on whether we should require all wireless ETCs participating in and/or winning universal service auctions to comply with CTIA's Consumer Code for Wireless Service. Are there other consumer protection and service quality standards that should apply to auction participants and/or winners? We seek comment on what type of consumer protection and service quality standards should apply to wireline auction participants and/or winners, including incumbent LECs.

34. *Adequate Financial Resources.* In the *ETC Designation Order*, the Commission declined to adopt the Joint Board's recommendation that an ETC applicant demonstrate that it has the financial resources and ability to provide quality services throughout the designated service area. The Commission found that compliance with the requirements adopted in that order would require an ETC applicant to show that it has significant financial resources. After obtaining a license, whether by auction or other means, wireless carriers must further comply with the Commission's rules by meeting build-out or substantial service requirements for the particular service. We seek comment on whether we should adopt additional requirements for ETCs participating in universal service auctions to demonstrate that they have the financial resources and ability to provide quality services throughout the geographic area to be auctioned.

35. *Additional Obligations/Provision of Broadband Internet Access Services.* In addition to the ETC requirements adopted in the *ETC Designation Order*, we seek comment on whether we should adopt additional obligations in the context of reverse auctions. We ask parties to comment on the specific additional universal service obligations they believe to be appropriate, and how they should be defined. We tentatively conclude that the Commission should require an auction winner to offer broadband Internet access services with information transfer rates greater than or equal to 768 kbps in at least one direction throughout the entire geographic area for which it wins the auction. In addition, we tentatively conclude that the Commission should require an auction winner to offer broadband Internet access services with information transfer rates greater than or equal to 1.5 mbps in at least one direction throughout the entire geographic area halfway through the term of the obligations. We reach these tentative conclusions because ''[t]he Commission has consistently recognized the critical importance of broadband services to the nation's present and future prosperity and is committed to adopting policies to promote the development of broadband services, including broadband Internet access services.'' *Development of Nationwide Broadband Data To Evaluate Reasonable And Timely Deployment of Advanced Services To All Americans, Improvement of Wireless Broadband Subscribership Data, And Development of Data on Interconnected Voice Over Internet Protocol Subscribership*, 72 FR 27519, May 16, 2007. We seek comment on these tentative conclusions. Further, we tentatively conclude that an auction winner's broadband Internet access services should be offered at a reasonable price. We seek comment on how we should ensure that broadband Internet access services are being offered at reasonable prices.

Reserve Prices

36. Because there may be few bidders in certain geographic areas, it is important to establish a reserve ''price''—i.e. a maximum subsidy level that participants in the auction would be allowed to place as a bid. We seek comment on how we should set the reserve prices for the areas to be auctioned. We expect that the reserve prices will play a critical role in the auctions. A reserve price that is set too low is likely to discourage bidders from participating in the auction, while one that is set too high raises the possibility that too much support will be allocated.

37. At least initially, reserve prices could be based on the current levels of high-cost support. We seek comment on how reserve prices based on current support should be determined if the geographic area to be auctioned differs from the area for which support is currently calculated. For example, if the geographic areas for the auctions are wire centers, for non-rural study areas it would be fairly straightforward to set wire center reserve prices based on the forward-looking costs estimated by the Commission's cost model.

38. Because the non-rural mechanism targets support to wire centers based on relative cost, the highest cost wire centers would have the highest per-line reserve price. For rural study areas with multiple wire centers, however, embedded costs for incumbent LECs are typically available only at the study area level. If a reserve price were based on the average cost per line in the study area, or if a fixed reserve subsidy for a study area were allocated on a per-line basis, the reserve price would not accurately reflect the costs of the individual wire centers or other geographic units within the study area. As noted above, this would discourage participation in the auction by competitive ETCs in the higher cost areas. In addition, encouraging competitive ETCs to bid for the lower cost areas could potentially provide insufficient support for an incumbent LEC with the obligation to serve the remaining higher cost areas. One alternative would be to determine a reserve price at the wire center level by

allocating the study area embedded cost on the basis of relative forward-looking costs as determined at the wire center level by the Commission's cost model. Another alternative would be to set reserve prices for rural study areas on the basis of a formula in which either forward-looking, model-generated cost or embedded cost data are used to estimate costs on the basis of observable factors such as customer density. For example, if a forward-looking approach is used to set a reserve price for non-rural geographic areas, one could use the data generated by the forward-looking cost model to regress model costs by wire center on wire center customer density. The result would be a simple analytic formula that could be used in place of the model to set reserve prices for geographic units in rural study areas. We seek comment on these and other alternatives.

39. We tentatively conclude that, if the reserve price is based on the current levels of high-cost support and the area to be auctioned is smaller than the incumbent LEC's study area, the reserve price should be based on disaggregated support amounts. We also tentatively conclude that, if reserve prices are based on disaggregated support amounts, reserve prices in the aggregate should be capped at the current study area support amount. We seek comment on these tentative conclusions.

40. After the initial auction, the winning bids in the most recent prior auctions could be used to establish a reserve price in the next auction. If the geographic areas subject to auction are smaller than an incumbent LEC's service area, then the reserve price could be determined for each geographic unit for both rural and non-rural study areas as described above, but using the previous auction's winning bid rather than the incumbent LEC's forward-looking or embedded cost. Use of prior auction data would result in reserve prices that are responsive to changing technologies, and would lessen the need to rely on forward-looking cost models after the initial auction. On the other hand, use of prior auction results might introduce new strategic considerations into any given auction, since participants would be aware that their bid might affect future reserve prices. We seek comment on these issues.

Auction Design

41. The Commission has conducted public auctions for electromagnetic spectrum rights since 1994. In a spectrum auction, a winning bidder obtains a license to use spectrum in a well defined geographic area. The value of winning a particular area, however, can be closely related to the value of winning in adjacent areas. Individual bidders may have unique business models, so that the value of winning a particular area will generally differ among the bidders. At the same time, there can be a common value component if competing bidders have similar business models, even though each bidder has unique information about demands, costs or other relevant aspects of the business model. In its spectrum auctions, the Commission has used an auction design known as the simultaneous multiple round (SMR) auction to address these issues. The SMR auction is a form of ascending price auction in which bidders are allowed to place bids for any number of single licenses in a series of discrete, successive rounds, with the length of each round announced in advance by the Commission. After each round closes, round results are processed and made public. At that time, bidders learn about the bids placed by other bidders, obtaining information about the value of the licenses to all bidders. This increases the likelihood that the licenses will be assigned to the bidders who value them the most. In an SMR auction, there is no preset number of rounds. Bidding continues until a round occurs in which no new bids are submitted.

42. Recently, variations on the SMR design have been proposed in which bidders are allowed to bid on packages of licenses. With package or ''combinatorial'' bidding, bidders may place bids on groups of licenses as well as on individual licenses. This approach allows bidders to better express the value of any synergies (benefits from combining complementary items) that may exist among licenses and to avoid the risk of winning only part of a desired set. Package bidding can be important to bidders who anticipate significant economies of scale and scope in deploying new infrastructure, or who expect customer demand to depend on total network coverage.

43. The auction design for a reverse auction to determine high-cost universal service support should make use of the Commission's experience with spectrum auctions as much as possible. As a general matter, we invite parties to comment on the similarities and differences between auctions for spectrum and reverse auctions for subsidies for high-cost support.

44. Whether or not the SMR design is considered as a basis for a reverse auction for high-cost support, there are a number of specific issues that must be resolved. To what extent should package bidding be allowed? Unrestricted combinatorial bidding would allow bidders to place a bid for any package of geographic areas in the auction. If small geographic areas are chosen as units for auction, package bidding may be essential for bidders to make appropriate bids based on their perceived cost and demand complementarities among geographic regions. On the other hand, an unrestricted combinatorial bidding procedure with a large number of distinct geographic areas could prove to be confusing to bidders and potentially computationally intractable. Should individual auctions with combinatorial bidding be held at a regional or state specific level instead of on a national basis? A broader scope for the auction would allow bidders to better capture interrelationships between geographic areas. However, a larger scope would also significantly increase the complexity of the auction, whether or not package bidding is allowed.

45. If a multiple round auction is considered, another important issue is the information that is revealed to bidders between rounds. A multiple round auction can lead to efficient outcomes in auctions with a common value component, since the highest bid at any round is necessarily revealed to all bidders. However, if additional information, such as the identity of the current winning bidder for each item is also revealed, strategic behavior may be facilitated. We seek comment on the potential dangers of anti-competitive strategic behavior in an auction for high-cost support, and the potential effects on economic efficiency.

46. If parties do not believe that an SMR auction design should be used for high-cost support, they should propose and discuss in detail the specific auction design that they believe to be superior. For example, would a single round ''sealed bid'' format be acceptable? If so, should the winning bidder receive a subsidy based on its own bid for the necessary subsidy or on the bid of the next higher bidder? Under the latter alternative, known as a ''second price auction,'' it is well known that bidders have an incentive to place a bid based on the minimum subsidy they would be willing to accept (since the subsidy they receive does not depend on their actual bid). How are these auction designs affected if the number of bidders is small? Parties are also invited to comment on the specific auction designs used in other countries in which reverse auctions have been used for universal service support.

Frequency of Auctions

47. We seek comment on the appropriate length of time between auctions. Currently, each applicant seeking ETC designation by the Commission must submit a five-year plan describing with specificity its proposed improvements or upgrades to its network on a wire center-by-wire center basis throughout its designated service area. Would five years be an appropriate length of time between auctions, or should auctions be more or less frequent?

48. Auctions for universal service support are closely related to franchise bidding schemes for natural monopoly, which have been extensively studied in economics literature. Bidders in any particular auction require some degree of certainty about future revenues, including subsidies, in order to make informed investment decisions. Williamson discusses some of the less obvious advantages of long-term contracting, which, in the reverse auction context, would call for relatively infrequent auctions. On the other hand, new technologies may periodically evolve that would allow lower cost provision of telecommunications services in high-cost areas. In addition, more frequent auctions can allow for more informed bidding decisions, since each bidder would be more able to predict levels of demand and potential competition in the immediate future than in the longer term.

49. To the extent that support levels provided to a winning bidder become an essential source of revenue for the winning bidder, the question of asset transfers must be considered in cases in which a new winning bidder replaces a previously supported carrier. For example, it might be efficient for a cellular carrier that wins an auction to acquire towers and fiber links from a previously supported carrier serving the same region. If asset transfers are determined only through bilateral bargaining between the relevant parties, incumbent LECs might have a significant advantage due to their sunk costs. As a result, there may be fewer bidders in subsequent auctions than would otherwise be desirable. Should there be any oversight or other restrictions on the transfer of assets when a new winning bidder replaces the previous auction winner? We ask parties to comment on this analysis and its importance in assessing the long-term viability of reverse auctions for universal service support.

Broadband Reverse Auction Pilot Program

50. Finally, in light of the complexities in establishing a reverse auction, we seek comment on whether we should employ a pilot program to test the use of reverse auctions as a method for distributing high-cost support. Specifically, we seek comment on whether we should adopt a pilot program to replace the current high-cost support received in a particular area. We tentatively conclude that, in any pilot program, the reserve price should be based on the current level of support in the particular area. We also tentatively conclude that the States are best situated to implement any pilot program. We seek comment on how such a pilot program should be implemented.

51. We also seek comment on whether a pilot program should be used to disburse high-cost support targeted to broadband Internet access services. We note that Alltel has filed a broadband auction proposal, and we seek comment on that proposal. Similarly, AT&T has proposed its own broadband pilot program. We seek comment on AT&T's broadband pilot program, and whether it would be possible to use a reverse auction approach under that proposal.

Procedural Matters

52. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 3, 2008, and reply comments are due on or before May 5, 2008. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Ex Parte Requirements

53. These matters shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200–1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and

written presentations are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Initial Regulatory Flexibility Analysis

54. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA, which is set forth below. Comments must be identified as responses to the IRFA and must be filed on or before April 3, 2008. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

55. In the Telecommunications Act of 1996 (1996 Act), Congress sought to preserve and advance universal service while, at the same time, opening all telecommunications markets to competition. Telecommunications Act of 1996, Public Law 104–104 (1996). Section 254(b) of the Act directs the Federal-State Joint Board on Universal Service (Joint Board) and the Commission to base policies for the preservation and advancement of universal service on several general principles, plus other principles that the Commission may establish. Section 254(e) provides that only eligible telecommunications carriers (ETCs) designated under section 214(e) shall be eligible to receive federal universal service support, and any such support should be explicit and sufficient to achieve the purposes of that section.

56. In the *Universal Service First Report and Order,* the Commission recognized certain advantages of using competitive bidding to determine high-cost universal service support, specifically, ''its potential as a market-based approach to determining universal service support, if any, for any given area,'' and ''its ability to reduce the amount of support needed for universal service.'' 62 FR 32682, June 17, 1997. The record at the time, however, was insufficient to support adoption of a competitive bidding mechanism. Moreover, the Commission found it unlikely that competitive bidding mechanisms would be useful at that time because of the expectation that there would be no competition in a significant number of rural, insular, or high-cost areas in the near future. Nonetheless, the Commission found that competitive bidding warranted further consideration.

57. More recently, there has been renewed interest in using competitive bidding to determine high-cost universal service support. In August 2006, the Joint Board sought comment on the merits of using auctions to determine high-cost universal service support. *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support,* 71 FR 50420, August 25, 2006. The Joint Board also sought comment on auctions in the ETC/Portability proceeding. *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process,* 68 FR 10429, March 5, 2003. In February 2007, the Joint Board held an *en banc* hearing to discuss high-cost universal service support in rural areas, including the use of reverse auctions to determine support. *Federal-State Joint Board on Universal Service to Hold En Banc Hearing on High-Cost Universal Service Support in Areas Served by Rural Carriers,* 22 FCC Rcd 2545 (2007). The Joint Board received three specific auction proposals in response to the *2006 Joint Board Public Notice* and the *en banc* hearing. In a public notice, released May 1, 2007, the Joint Board sought comment on these proposals and invited commenters to file additional auction proposals. *Federal-State Joint Board on Universal Service Seeks Comment on Long Term Comprehensive High-Cost Universal Service Reform,* 22 FCC Rcd 9023 (2007). The Joint Board also recommended that, as an interim measure, the Commission adopt a cap on competitive ETC support. *Recommended Decision,* 22 FCC Rcd 8998 (2007).

58. In this NPRM, the Commission seeks comment on the merits of using reverse auctions (a form of competitive bidding) to determine the amount of high-cost universal service support provided to ETCs serving rural, insular, and high-cost areas. In a reverse auction, support generally would be determined by the lowest bid to serve the auctioned area. The Commission tentatively concludes that reverse auctions offer several potential advantages over current high-cost support distribution mechanisms, and that the Commission should develop an auction mechanism to determine high-cost universal service support. The objective of the NPRM is to seek comment on this tentative conclusion and on a number of specific issues regarding auctions and auction design that must be resolved in order for the Commission to implement an auction mechanism.

Legal Basis

59. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 4(j), 201 through 205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) through (j), 201 through 205, 214, 254, 403 and §§ 1.1, 1.411 through 1.419, and 1.1200 through 1.1216, of the Commission's rules, 47 CFR 1.1, 1.411 through 1.419, 1.1200 through 1.1216.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

60. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules, if adopted. 5 U.S.C. 604(a)(3). The RFA generally defines the term ''small entity,'' 5 U.S.C. 601(6), as having the same meaning as the terms ''small business,'' 5 U.S.C. 601(3), ''small organization,'' 5 U.S.C. 601(4), and ''small governmental jurisdiction.'' 5 U.S.C. 601(3). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. 5 U.S.C. 601(3). Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 2002, there were approximately 1.6 million small organizations.

61. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. 13 CFR 121.201.

Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

Wireline Carriers and Service Providers

62. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

63. *Incumbent LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent LECs. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201. According to Commission data, 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees, and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

64. *Competitive LECs, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201. According to Commission data, 859 carriers reported that they were engaged in the provision of either competitive LEC or CAP services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees, and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that most competitive LECs, CAPs, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action.

Wireless Carriers and Service Providers

65. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' 13 CFR 121.201. Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

66. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. 13 CFR 121.201. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 221 of these are small under the SBA small business size standard.

Satellite Service Providers

67. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

68. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

69. In the NPRM, the Commission tentatively concludes that, under a reverse auction mechanism, bidders must hold an ETC designation covering the relevant geographic area prior to participating in an auction to determine high-cost support for that geographic area. In the *ETC Designation Order*, the Commission required ETCs designated by the Commission to submit annually certain information regarding their networks and their use of universal service funds. Specifically, every ETC designated by the Commission must submit the following information on an annual basis:

(1) Progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets; an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

(2) Detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) The date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;

(3) The number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;

(4) The number of complaints per 1,000 handsets or lines;

(5) Certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;

(6) Certification that the ETC is able to function in emergency situations;

(7) Certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(8) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

In the NPRM, the Commission sought comment on whether the Commission's ETC designation requirements should apply to all ETCs participating in and/or winning universal service auctions.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

70. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities. 5 U.S.C. 603(c).

71. This IRFA seeks comment on how reverse auctions could be implemented in a manner that reduces the potential burden and cost of participation by small entities in the auctions. We also seek comment on the potential impact the use of reverse auctions to distribute high-cost universal service support would have on small entities. In the NPRM, the Commission offers several alternatives that might minimize significant economic impact on ETCs, some of which might be small entities. For example, the Commission discusses proposals to use relatively small geographic areas as the areas to be auctioned, and specifically seeks comment on how the size of the geographic area affects the ability of small entities to participate in auctions. The Commission also seeks comment on various methods of setting reserve prices based on current levels of high-cost support, and tentatively concludes that the reserve price should be set at disaggregated support amounts if the area to be auctioned is smaller than the incumbent LEC's study area.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

72. None.

Ordering Clauses

73. Accordingly, *It is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201–205, 214, 254, 403 and §§ 1.1, 1.411–1.419, and 1.1200–1.1216, of the Commission's rules, 47 CFR 1.1, 1.411–1.419, 1.1200–1.1216, this Notice of Proposed Rulemaking is adopted.

74. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–4146 Filed 3–3–08; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1537 and 1552

[Docket ID No. EPA–HQ–OARM–2007–1115; FRL–8536–8]

RIN 2030–AA96

Acquisition Regulation: Guidance on Technical Direction

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the EPA Acquisition Regulation (EPAAR) to revise the prescription for and the content of a clause that addresses issuing technical direction in contracts. This revision incorporates and supersedes several class deviations to the EPAAR and updates terminology and procedures related to issuing technical direction.

DATES: Comments must be received on or before April 3, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2007–1115, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: docket.oei@epa.gov.*
- *Fax:* (202) 566–0224.
- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of three (3) copies
- *Hand Delivery:* EPA Docket Center-Attention OEI Docket, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. 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–OARM–2007–1115. EPA's policy is that all timely comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Valen D. Wade, Policy, Training, and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–2284; fax number: 202–565–2474; e-mail address: *wade.valen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this proposed action include firms that are performing or will perform under contract to the EPA. This includes firms in all industry groups.

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

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

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

II. Background

Under certain contracts the contracting officer authorizes a designated individual, e.g., the contracting officer technical representative or COTR, to issue technical direction to the contractor. The technical direction clause in the contract defines what constitutes technical direction, which officials are authorized to issue technical direction, and procedures for issuing technical direction.

Since the EPAAR technical direction guidance was originally issued, several class deviations to the clause have been approved. (A class deviation is a change to the EPAAR necessary to meet specific contract requirements.) This proposed revision would incorporate and supersede the class deviations and make additional revisions to the technical direction guidance as specified below.

III. Proposed Rule

This proposed rule would amend the EPAAR to revise the prescription for using the Technical Direction clause and the wording of the clause itself. The current prescription states the clause is used in cost reimbursement type solicitations and contracts. The revised prescription would allow contracting officers to use the clause, or a clause substantially the same, in solicitations and contracts where the contracting officer will delegate authority to issue technical direction to the contracting officer technical representative.

The EPAAR clause entitled ''Technical Direction'' is revised in several ways. First, two new terms are added and defined: ''contracting officer technical representative'' and ''task order.'' The reason for adding these terms is to standardize titles and terminology used at EPA with terms used in the Federal Acquisition Regulation (FAR) and other Federal procurement policy. For example, the current clause refers to the ''project officer'' as the individual who may be authorized to issue technical direction. Other terms, such as task order project officer, work assignment manger, and delivery order project officer are also used at EPA. The revised clause will standardize these terms under the title ''contracting officer technical representative.''

Instead of merely stating technical direction is direction which assists the contractor in accomplishing the statement of work, the revised clause provides more detail in describing technical direction as authorized instruction to the contractor which approves approaches, solutions, designs, or refinements; fills in details; completes the general description of work; or shifts emphasis among work areas or tasks.

The technical direction clause specifically states the contracting officer technical representative cannot request a change outside the scope of the contract, i.e., a cardinal change. The clause also protects against constructive changes by requiring the contractor to contact the contracting officer if

direction given by the contracting officer technical representative: (1) Institutes additional work outside the scope of the contract or work request; (2) Constitutes a change as defined in the ''Changes'' clause; (3) Causes an increase or decrease in the estimated cost of the contract or task order; (4) Alters the period of performance of the contract or task order; or (5) Changes any of the other terms or conditions of the contract or task order. The contractor is reminded that following any direction given by any person other than the contracting officer or the contracting officer technical representative shall be at the contractor's risk.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO)12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* No information is collected under this action.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes: the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's proposed rule on small entities, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This action revises a current EPAAR clause and does not impose requirements involving capital investment, implementing procedures, or record keeping. This rule will not have a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for: notifying potentially affected small governments; enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates; and, informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposed rule on technical direction provides guidance on the interaction between contracting officials and contractors only. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's proposed rule on technical direction provides guidance on the interaction between contracting officials and contractors only. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

H. Executive Order 13211 (Energy Effects)

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities; unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rulemaking does not involve human health or environmental affects.

List of Subjects in 48 CFR Parts 1537 and 1552

Government procurement.

Dated: February 21, 2008.

Denise Benjamin Sirmons,

Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 15 is proposed to be amended as set forth below:

PART 1537—SERVICE CONTRACTING

1. The authority citation for part 1537 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Amend § 1537.110 by revising paragraph (b) to read as follows:

1537.110 Solicitation provisions and contract clauses.

* * * * *

(b) The contracting officer shall insert a clause substantially the same as the clause in 1552.237–71, Technical Direction, in solicitations and contracts where the contracting officer intends to delegate authority to issue technical direction to the contracting officer technical representative(s).

* * * * *

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 1552 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

4. Revise § 1552.237–71 to read as follows:

1552.237–71 Technical Direction.

As prescribed in 1537.110, insert a clause substantially the same as the following:

Technical Direction (XXX 2008)

(a) *Definitions.*

Contracting officer technical representative (COTR), means an individual appointed by the contracting officer in accordance with Agency procedures to perform specific technical and administrative functions.

Task order, as used in this clause, means work assignment, delivery order, or any other document issued by the contracting officer to order work under a service contract.

(b) The contracting officer technical representative(s) may provide technical direction on contract or work request performance. Technical direction includes:

(1) Instruction to the contractor that approves approaches, solutions, designs, or refinements; fills in details; completes the general description of

work; shifts emphasis among work areas or tasks; and

(2) Evaluation and acceptance of reports or other deliverables.

(c) Technical direction must be within the scope of work of the contract and any task order thereunder. The contracting officer technical representative(s) does not have the authority to issue technical direction which:

(1) Requires additional work outside the scope of the contract or task order;

(2) Constitutes a change as defined in the ''Changes'' clause;

(3) Causes an increase or decrease in the estimated cost of the contract or task order;

(4) Alters the period of performance of the contract or task order; or

(5) Changes any of the other terms or conditions of the contract or task order.

(d) Technical direction will be issued in writing or confirmed in writing within five (5) days after oral issuance. The contracting officer will be copied on any technical direction issued by the contracting officer technical representative.

(e) If, in the contractor's opinion, any instruction or direction by the contracting officer technical representative(s) falls within any of the categories defined in paragraph (c) of this clause, the contractor shall not proceed but shall notify the contracting officer in writing within 3 days after receiving it and shall request that the contracting officer take appropriate action as described in this paragraph. Upon receiving this notification, the contracting officer shall:

(1) Advise the contractor in writing as soon as practicable, but no later than 30 days after receipt of the contractor's notification, that the technical direction is within the scope of the contract effort and does not constitute a change under the ''Changes'' clause of the contract;

(2) Advise the contractor within a reasonable time that the government will issue a written modification to the contract; or

(3) Advise the contractor that the technical direction is outside the scope of the contract and is thereby rescinded.

(f) A failure of the contractor and contracting officer to agree as to whether the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto, shall be subject to the provisions of the clause entitled ''Disputes'' in this contract.

(g) Any action(s) taken by the contractor, in response to any direction given by any person acting on behalf of the government or any government official other than the contracting officer or the contracting officer technical representative, shall be at the contractor's risk.(End of clause)

[FR Doc. E8–4153 Filed 3–3–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.071128763–7773–01]

RIN 0648–AW33

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to implement new management measures for the monkfish fishery recommended in Framework Adjustment 5 (Framework 5) to the Monkfish Fishery Management Plan (FMP), which has been submitted jointly by the New England (NEFMC) and Mid-Atlantic Fishery Management Councils (Councils). This action would implement revised biological reference points in the FMP to be consistent with the recommendations resulting from the most recent stock assessment for this fishery (Northeast Data Poor Stocks Working Group (DPWG, July 2007)), and implement revised management measures to ensure that the monkfish management program succeeds in keeping landings within the target total allowable catch (TAC) levels.

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on March 25, 2008.

ADDRESSES: You may submit comments, identified by RIN number 0648–AW33, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov*.
- Fax: (978) 281–9135, Attn: Allison McHale.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Monkfish Framework 5.''

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Environmental Assessment (EA), including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), prepared for Framework 5 are available upon request from Paul Howard, Executive Director, NEFMC, 50 Water Street, Newburyport, MA, 01950. The document is also available online at *www.nefmc.org*.

FOR FURTHER INFORMATION CONTACT: Allison McHale, Fishery Policy Analyst, e-mail *Allison.McHale@noaa.gov*, phone (978) 281–9103, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the Councils, with the NEFMC having the administrative lead. The fishery extends from Maine to North Carolina, and is divided into two management units: The Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA).

In July 2007, the DPWG completed and accepted a new monkfish assessment. The results of this assessment indicate that neither stock is overfished, overfishing is no longer occurring, and both stocks are rebuilt based on a new modeling approach and newly recommended biological reference points. In addition to the fact that this assessment was the first to use a new analytical model, the July 2007 assessment report emphasizes the high degree of uncertainty in the analyses due to the dependence on assumptions about natural mortality, growth rates, and other model inputs. The report concluded that the data-poor nature of this species and the significant uncertainty in assessing the stocks should be considered when developing management measures. Framework 5 is needed to implement the revised biological reference points recommended by the DPWG and would make other modifications to the

regulations to ensure that the management program succeeds in keeping landings within the target TACs implemented in Framework Adjustment 4 (72 FR 53942; September 21, 2007). The management measures contained in Framework 5 are described in detail in the following paragraphs.

Proposed Framework 5 Management Measures

1. Revision to Biological Reference Points

This action would revise the biological reference points contained in the FMP to be consistent with those recommended in the July 2007 assessment report. In that report, the DPWG recommended that B_{target} for both management areas be set equivalent to the average of the total biomass from 1980 through 2006. This would establish a B_{target} of 92,200 mt for the NFMA and 122,500 mt for the SFMA. In addition, the DPWG recommended that $B_{threshold}$ for both management areas be set equivalent to the lowest value of total biomass from 1980 through 2006. This would establish a $B_{threshold}$ of 65,200 mt for the NFMA and 96,400 mt for the SFMA. The most recent estimate of biomass for each management area (B_{2006}) is 118,700 mt for the NFMA and 135,500 mt for the SFMA. Therefore, under the revised biological reference points contained in Framework 5, both monkfish stocks would officially no longer be considered overfished (B_{2006} above $B_{threshold}$), and would be rebuilt (B_{2006} above B_{target}).

2. Reduction in Carryover Days-at-Sea (DAS)

This action would reduce the number of unused monkfish DAS that a limited access monkfish vessel is allowed to carry over from one fishing year into the next from 10 to 4 DAS. Under this management measure, the carryover DAS allowance would represent 13 percent of the total annual DAS allocated to monkfish vessels (31 DAS) and 17 percent of the DAS allowed in the SFMA (23 DAS).

Carryover DAS are intended to enhance safety at sea by allowing a vessel, at the end of a fishing year, to avoid the predicament of using or losing DAS in the event of bad weather or mechanical problems. However, the use of carryover DAS contributed to a substantial overage (60 percent) in the target TAC for the SFMA during FY 2006, when vessels in this area were only allocated 12 DAS for the fishing year. During that fishing year, carryover DAS represented over an 80–percent increase above a limited access monkfish vessel's base allocation of monkfish DAS. Therefore, the Councils are recommending that carryover DAS be reduced to reflect an amount that is more commensurate to a vessel's base DAS allocation to help ensure that the target TACs are not exceeded.

3. Revision to DAS Accounting Provision for Gillnet Vessels

This action would change the manner in which DAS are counted for monkfish gillnet vessels. The FMP currently states that monkfish gillnet vessels are charged actual time fished on trips less than 3 hours or greater than 15 hours in duration, but are charged a minimum of 15 hours for trips from 3 to 15 hours in duration. The intent of this regulation was to adjust gillnet effort to be more equivalent to trawl effort, but allow vessels that run into bad weather or experience mechanical difficulties at the beginning of a trip to return to port and only be charged actual time at sea (i.e., trips less than 3 hours in duration). However, as monkfish DAS have been reduced in recent years, some vessels have begun to exploit this 3-hour window and use it to catch and land monkfish. As a result, an allocation of 23 monkfish DAS, for example, would normally allow a vessel to take approximately 36 15-hour trips. If that vessel exploited the 3-hour provision, the number of potential trips could increase to as many as 184. It appears that only a few vessels are currently exploiting this provision, but there is potential for increased usage, which then increases the probability that the target TACs will be exceeded. As a result, the Councils are recommending that the 3-hour provision be eliminated, requiring all monkfish gillnet trips of less than 15 hours in duration to be charged 15 hours.

This action would also add a sentence to the section of the regulations concerning the monkfish gillnet accounting rules, found at § 648.92 (b)(8)(v), to clarify that a monkfish gillnet vessel fishing under a joint monkfish and NE multispecies DAS, that is declared as a trip gillnet vessel under the NE Multispecies FMP, must remove its gillnet gear from the water prior to calling out of the DAS program. The language contained in this section was recently clarified in a letter from the Regional Administrator to limited access monkfish permit holders, dated August 13, 2007.

4. Revision to the Incidental Catch Limit in the SFMA

This action would revise the monkfish incidental catch limit applicable to large-mesh vessels fishing in the Southern New England Regulated Mesh Area (SNE RMA), as defined under the Northeast (NE) multispecies regulations, east of 72°30′ W long., but not under a monkfish, NE multispecies, or scallop DAS, or vessels fishing under a Skate Bait Letter of Authorization (LOA) in the SNE RMA east of 74°00′ W long., to be 5 percent (tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight per day, up to 150 lb (68 kg) tail weight per trip. The Councils are recommending this change to the incidental catch limit in response to reports that vessels fishing for skate as bait in the SNE RMA, using mesh larger than the multispecies minimum mesh size (i.e., large mesh), are targeting monkfish using the existing incidental catch limit; which is 5 percent (tail weight) of the total weight of fish on board with no limit on the amount of monkfish that the vessel can land. This behavior could undermine the FMP's ability to prevent overfishing. The landings cap recommended by the Councils in this action is equivalent to the incidental catch limit applicable to vessels not fishing under a DAS in the SNE RMA with small-mesh, hook gear, or dredge gear.

5. Revision to Monkfish LOA Requirement

This action would eliminate the requirement to obtain a Monkfish LOA to fish under the less restrictive management measures of the NFMA for vessels using a vessel monitoring system (VMS). Monkfish vessels using the interactive voice response (IVR) call-in system would still be required to obtain a Monkfish LOA. The Councils are considering this action because requiring an LOA was determined to be burdensome and unnecessary, given that VMS screens were recently revised to enable limited access monkfish vessels to declare the management area in which they are fishing when declaring a monkfish DAS. In addition, the VMS system enables NMFS to monitor where these vessels are fishing. Conversely, although vessels using the IVR call-in system can now declare the management area in which they are fishing through this system, NMFS cannot monitor where these vessels are fishing in the same manner as VMS vessels. Therefore, the Councils are recommending that the Monkfish LOA requirement be retained for vessels using the IVR call-in system.

Technical Corrections to Monkfish FMP Regulations

Two corrections to the regulations implementing the Monkfish FMP are included in this proposed rule. The first

correction would remove a duplicate paragraph concerning the impact of leasing NE multispecies DAS on a vessel's monkfish DAS allocation (§ 648.92(b)(2)(iii)). This paragraph should have been removed in the final rule implementing Framework 4. The second set of corrections would correct the cross-references to the regulations implementing the Atlantic Sea Scallop FMP concerning accrual of DAS and the Good Samaritan credit found at § 648.92(b)(3) and (4). It appears that the final rule implementing Amendment 10 to the Atlantic Sea Scallop FMP (69 FR 35215; June 23, 2004) revised § 648.53, thereby inadvertently impacting these cross-references in the monkfish regulations.

Classification

NMFS has determined that this proposed rule is consistent with the FMP and has preliminarily determined it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared for Framework 5, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA consists of the discussion in the preamble and this section, and the analysis of impacts in Framework 5. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble and in the **SUMMARY** of this proposed rule. A copy of this analysis is available from the NEFMC (see **ADDRESSES**). A summary of the analysis follows:

The primary reason for this action is to adopt the revisions to the biological reference points as recommended by the DPWG. However, additional measures were included to address comments from the Regional Administrator and the public that were raised during the development and implementation of Framework 4. As a result, three additional measures aimed at reducing the potential for monkfish landings to exceed the TACs were added to Framework 5. In addition, a measure to eliminate the need for a Monkfish LOA to fish for monkfish in the NFMA for vessels with VMS was included to reduce the administrative burden on vessel operators.

The regulations implementing the FMP, found at 50 CFR part 648, subpart F, authorize the Council to adjust management measures as needed to achieve FMP goals. The objective of this action is to achieve the goals of the FMP by using the best scientific information available by adopting new biological reference points, to reduce the probability of monkfish landings exceeding the target TACs by reducing unanticipated opportunities for additional landings, and to reduce the administrative burden on vessels. Thus, the proposed action is consistent with the goals of the FMP and its implementing regulations.

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses ($4.0 million in gross sales). Therefore, there are no differential impacts between large and small vessels. As of November 30, 2007, there were 765 limited access monkfish permit holders and 2,142 vessels holding an open access Category E permit. In FY 2006, there were 616 limited access permits holders that participated in the monkfish fishery based on vessel trip report (VTR) records. During the same period, 574 Category E permit holders reported landing monkish. Based on VTR information from FY 2006 (the most recent FY for which complete information is available) this action would affect up to 194 limited access monkfish vessels that would like to carry over more than 4 monkfish DAS; 101 limited access monkfish gillnet vessels landing monkfish on trips less than 3 hours in duration; 21 vessels using large mesh (and not on a DAS) or under a Skate Bait LOA in the SNE RMA and landing monkfish above the proposed 50 lb (23 kg) per day, up to 150 lb (68 kg) per trip incidental catch limit; and 105 vessels with a VMS that fish in the NFMA.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Economic Impacts of Proposed Framework 5 Measures

1. Revision to Biomass Reference Points

This measure would modify the existing biomass reference points ($B_{threshold}$, B_{target}) for monkfish, consistent with the results of the most recent stock assessment. The proposed revision to the biological reference points does not immediately affect any vessels because it does not change any management measures or otherwise modify vessel level aspects of the management program.

2. Reduction in Carryover DAS

This measure would reduce the number of unused monkfish DAS that a limited access monkfish vessel is allowed to carry over from one fishing year into the next from 10 to 4 DAS. Reducing the number of unused DAS that can be carried forward into the next fishing year to 4 DAS would reduce the economic opportunities for those vessels that would like to carry forward more DAS. In FY 2006, 186 vessels used an average of between 8.4 and 9.3 DAS, depending on management area fished, in addition to their allocated DAS used, while 8 vessels did not have carryover DAS available. An additional 46 vessels used only carryover DAS, suggesting they were not constrained by available DAS. Thus, based on FY 2006 data, approximately 194 vessels may have economic opportunities reduced by the proposed reduction in carryover DAS. A caveat with this information is that carryover DAS are used prior to allocated DAS, making it difficult to fully assess the impact of carryover DAS.

When permit holders are unconstrained by their base allocation of monkfish DAS, there is no economic value associated with carryover DAS. In FY 2006, 240 permit holders used monkfish DAS, of which 5 permit holders fished only in the SFMA and used more than 23 DAS (base allocation plus carryover), the amount allowed for use in the SFMA during FY 2007. For permit holders that fished only in the NFMA, or both in the NFMA and SFMA, during FY 2006, 15 had total DAS usage above the 31 monkfish DAS allocated to these vessels during FY 2007. In general, this analysis suggests that 20 vessels would fully utilize their current DAS allocation, and so could have value for carryover DAS. However, the results for the NFMA should be viewed with caution since recent revisions to the monkfish regulations may require higher monkfish DAS usage in the NFMA. As a result, more permit holders may be constrained by the FY 2007 DAS allocation, and so have an economic value for carryover DAS.

While a permit holder may associate economic value with carryover DAS, this information does not provide guidance on how many carryover DAS a permit holder would value, or the value they would place on a carryover DAS. Additionally, other measures in Framework 5 (e.g. elimination of 3-hour DAS use) would require higher DAS use for some permit holders, particularly in the SFMA. Combined, the information suggests that while negative economic impacts would be anticipated for

Alternative 2 (4 carryover DAS) and Alternative 1 (6 carryover DAS) relative to Alternative 3 (no action), the number of affected permit holders would be small.

3. Revision to DAS Accounting Provision for Gillnet Vessels

The proposed action would require that all monkfish gillnet vessels be charged a minimum of 15 hours for each trip, even on trips less than 3 hours in duration. In FY 2006, 101 gillnet vessels had DAS charges of 3 hours (0.13 DAS) or less on 447 trips. The estimated total revenue generated by these trips was $891,229. A portion of this revenue would be lost as a result of this action since vessels may not have sufficient monkfish DAS available to convert all 3-hour trips to 15-hour trips (i.e., DAS allocation is constraining). It was estimated that fewer than five vessels would fall into this category. However, it is difficult to estimate the portion of total revenue lost, since it is not known how vessels would modify their fishing behavior to adjust for the elimination of the 3-hour provision. In general, the level of economic impact will depend on future DAS allocations and the degree to which these allocations are constraining on limited access monkfish vessels.

4. Revision to the Incidental Catch Limit in the SFMA

This measure would revise the monkfish incidental catch limit applicable to large-mesh vessels fishing in the SNE RMA, but not under a monkfish, NE multispecies, or scallop DAS, or vessels fishing under a Skate Bait Letter of Authorization (LOA) in the SNE RMA east of 74°00′ W long., to be 5 percent (tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight per day, up to 150 lb (68 kg) tail weight per trip. The proposed action would affect vessels fishing with large mesh in the SNE RMA east of 72°30′W long., and vessels fishing under a Skate Bait LOA anywhere in the SNE RMA. Approximately 12 vessels met these criteria in FY 2006. Only trips that exceed the proposed incidental landings limit of 50 lb (23 kg) of monkfish (tail weight) per day absent, or 150 lb (68 kg) of monkfish (tail weight) per trip, would see a reduction in trip revenues, and thus net revenues. Based on FY 2006 VTR information, three trips taken by three vessels would be affected with average lost revenues of $588 per vessel.

5. Revision to Monkfish LOA Requirement

This measure would eliminate the requirement to obtain a Monkfish LOA to fish under the less restrictive management measures of the NFMA for vessels using VMS. This action would reduce the administrative burden for those vessels that have VMS and fish in the NFMA at some time during the fishing year, including vessels with a monkfish incidental catch permit (i.e. Category E). According to VTR data, in FY 2006, 322 vessels fished only in the NFMA, with 263 of those vessels using VMS or a combination of VMS and IVR to report DAS for some species. Similarly, 282 vessels fished in both the NFMA and SFMA, 262 of which reported DAS with either only VMS or a combination of VMS and IVR. This suggests that at least 525 vessels, or 87 percent of those fishing in the NFMA, would have the capacity to utilize VMS to offset the need for a Monkfish LOA to fish in theNFMA.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 27, 2008

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.92, paragraphs (a)(1), (b)(3), (b)(4), and (b)(8)(v) are revised to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(a) * * *

(1) *End of year carryover.* With the exception of a vessel that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(J), for the entire fishing year preceding the carryover year, a limited access monkfish vessel that has unused monkfish DAS on the last day of April of any year may carry over a maximum of 4 unused monkfish DAS into the next fishing year. A vessel whose DAS have been sanctioned through enforcement proceedings shall be credited with unused DAS based on its DAS allocation minus any DAS that have been sanctioned.

* * * * *

(b) * * *

(3) *Accrual of DAS.* Same as § 648.53(f).

(4) *Good Samaritan credit.* Same as § 648.53(g).

(8) * * *

(v) *Method of counting DAS.* A vessel fishing with gillnet gear under a monkfish DAS will accrue 15 hours monkfish DAS for all trips less than or equal to 15 hours in duration. Such vessels will accrue monkfish DAS based on actual time at sea for trips greater than 15 hours in duration. A vessel fishing with gillnet gear under only a monkfish DAS is not required to remove gillnet gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the requirements and conditions of paragraphs (b)(8)(i) through (v) of this section. A vessel fishing with gillnet gear under a joint monkfish and NE multispecies DAS, as required under § 648.92(b)(2)(i), that is declared as a trip gillnet vessel under the NE Multispecies FMP, must remove its gillnet gear from the water prior to calling out of the DAS program, as specified at § 648.82(j)(2).

* * * * *

3. In § 648.94, paragraphs (c)(3) and (f) are revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(c) * * *

(3) *Vessels fishing with large mesh and not fishing under a DAS—*

(i) A vessel issued a valid monkfish incidental catch limit (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the GOM or GB RMAs with mesh no smaller than specified at § 648.80(a)(3)(i) and (a)(4)(i), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(ii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at

§ 648.80(b)(2)(i), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(iii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA under a Skate Bait Letter of Authorization, as authorized under § 648.322(b), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

(iv) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE or MA RMAs west of the MA Exemption Area boundary with mesh no smaller than specified at § 648.104(a)(1) while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, but not to exceed 450 lb (204 kg) tail weight or 1,494 lb (678 kg) whole weight of monkfish, unless that vessel is fishing under a Skate Bait Letter of Authorization in the SNE RMA. Such a vessel is subject to the incidental catch limit specified under paragraph (c)(3)(iii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

* * * * *

(f) *Area declaration requirement for a vessel fishing exclusively in the NFMA.* A vessel intending to fish for, or fishing for, possessing or landing monkfish under a multispecies, scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish exclusively in the NFMA for the entire trip. In addition, a vessel fishing under a monkfish DAS must declare its intent to fish in the NFMA through the vessel's VMS unit. A vessel that does not possess a VMS unit, such as a vessel that declares DAS through the call-in system, must declare its intent to fish in the NFMA by obtaining a letter of authorization from the Regional Administrator, for a period of not less than 7 days. A vessel that has not declared into the NFMA under this paragraph (f) shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provision described in paragraph (e) of this section, and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

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[FR Doc. E8–4124 Filed 3–3–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 73, No. 43
Tuesday, March 4, 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

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: The National Agricultural Research, Extension, Education, and Economics Advisory Board will meet March 18–20, 2008 at the Double Tree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20024.

ADDRESSES: The public may file written comments before or up to two weeks after the meeting with the contact person identified in this notice. You may submit comments by any of the following methods: E-mail: *JADunn@csrees.usda.gov*; Fax: (202) 720–6199; Mail/Hand-Delivery or Courier: The National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office, Room 344–A, Jamie L. Whitten Building, United States Department of Agriculture, STOP 2255, 1400 Independence Avenue, SW., Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Joseph A. Dunn, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 720–3684.

SUPPLEMENTARY INFORMATION: On Tuesday, March 18, 2008, from 1 p.m.–5 p.m. the full Advisory Board meeting will commence beginning with introductory remarks provided by the Chair of the Advisory Board and the Under Secretary for Research, Education, and Economics (REE), USDA. On Tuesday, March 18, 2008, 1:15 p.m., The Honorable Secretary of Agriculture, Ed Schafer will visit and provide welcome remarks to the Board on the Board's role in advising the Department on subjects relevant to REE. An evening session will be held beginning at 6:30 p.m., and adjourning at 9 p.m. with Dr. Gale Buchanan, Under Secretary for Research, Education, and Economics (REE) who will present remarks on how the Board can advise USDA on enhancing its research, extension, education, and economics programs. On Wednesday, March 19, 2008, a focus session continuing discussions on Educating the Future Work Force for Agriculture Natural Resources and Related Areas from the previous day will begin at 8 a.m. and end at 5:30 p.m. followed by an evening session beginning at 6:30 p.m. and ending at 8:30 p.m. with a guest speaker providing additional remarks on (1) What can we do to attract more students into the agriculture, natural resources, and related areas; and (2) What changes are needed by universities, USDA, (and others) to ensure we are training students for industry's needs now and in the future. On Thursday, March 20, 2008, the meeting will reconvene at 8 a.m. to recap highlights from the meeting and to discuss Board business. You will hear remarks from within and outside USDA pertaining to the agency perspective on the individual topics. An opportunity for public comment will be offered after the meeting wrap-up. The Advisory Board Meeting will adjourn by 12 (noon) on March 20, 2008.

Written comments by attendees or other interested stakeholders will be welcomed for the public record before and up to two weeks following the Board meeting (by close of business Thursday, April 3, 2008). All statements will become a part of the official record of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Research, Extension, Education, and Economics Advisory Board Office.

Done at Washington, DC, this 26 day of February 2008.

Gale Buchanan,

Under Secretary, Research, Education, and Economics.

[FR Doc. E8–4099 Filed 3–3–08; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0018]

Notice of Request for Approval of an Information Collection; Nomination Request Form; Animal Disease Training

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of an information collection activity associated with training related to animal diseases.

DATES: We will consider all comments that we receive on or before May 5, 2008.

ADDRESSES: You may submit comments by either of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0018* to submit or view comments and to view supporting and related materials available electronically.

Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS–2008–0018, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0018.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be

sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: For information on training related to animal diseases, contact Ms. Leslie Bolton, Program Specialist, Professional Development Staff, VS, APHIS, 4700 River Road Unit 27, Riverdale, MD 20737; (301) 734–3624. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS* Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Nomination Request Form; Animal Disease Training.

OMB Number: 0579–xxxx.

Type of Request: Approval of a new information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of animal diseases and pests and for eradicating such diseases when feasible. In connection with this mission, the Veterinary Services (VS) program of APHIS provides vital training to State, industry, and academic personnel to prepare them to respond to an animal disease event, including disease eradication activities and sample collection.

Individuals who wish to attend animal disease-related training must submit a Nomination Request Form (VS–1–5) to VS to help the program coordinate courses and select participants. VS develops rosters with course participants' names and their contact information to notify them of future training courses and to encourage contact among participants throughout their careers. We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.275985663 hours per response.

Respondents: State, industry, and academic personnel.

Estimated annual number of respondents: 552.

Estimated annual number of responses per respondent: 1.010869565.

Estimated annual number of responses: 558.

Estimated total annual burden on respondents: 712 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 27th day of February 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–4145 Filed 3–3–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0021]

Notice of Request for Extension of Approval of an Information Collection; Infectious Salmon Anemia; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the payment of indemnity due to infectious salmon anemia.

DATES: We will consider all comments that we receive on or before May 5, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0021* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0021, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0021.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information on regulations for the payment of indemnity due to infectious salmon anemia, contact Dr. Stephen Ellis, Assistant Area Veterinarian in Charge, Infectious Salmon Anemia Program, Aquaculture, Swine, Equine and Poultry Programs, VS, APHIS, 16 Deep Cove Road, Eastport, ME 04631; (207) 853–2581. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS* Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Infectious Salmon Anemia; Payment of Indemnity.

OMB Number: 0579–0192.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized

to prevent the interstate spread of serious diseases and pests of livestock within the United States and to eradicate such diseases and pests from the United States when feasible. In connection with this mission, APHIS established regulations in 9 CFR part 53 to pay indemnity to salmon producers in Maine whose fish are destroyed because of infectious salmon anemia (ISA).

ISA is a foreign animal disease of Atlantic salmon, caused by an orthomyxovirus. The disease affects both wild and farmed Atlantic salmon. ISA poses a substantial threat to the economic viability and sustainability of salmon aquaculture in the United States.

In order to take part in the indemnity program, producers must enroll in the cooperative ISA control program administered by APHIS and the State of Maine. Program participants must inform the ISA Program Veterinarian in writing of the name of their accredited veterinarian; develop biosecurity protocols and a site-specific ISA action plan; submit fish inventory and mortality information; assist APHIS or State officials with on-site disease surveillance, testing, and biosecurity audits; and complete an appraisal and indemnity claim form.

Payment is subject to the availability of funding.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 2.981481481 hours per response.

Respondents: Program participants (salmon producers) and their employees, accredited veterinarians, and State animal health officials.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 108.

Estimated annual number of responses: 216.

Estimated total annual burden on respondents: 644 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 27th day of February 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–4152 Filed 3–3–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Revise and Extend an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval to revise and extend a currently approved information collection, the Agricultural Resources Management Survey and Chemical Use Surveys. The following two scheduling changes will be requested. First, chemical use surveys are only requested for fall 2010 to include fruit and postharvest. Thus, no vegetable chemical use survey will be requested. Second, in 2008 only, in lieu of the fall ARMS Phase II Survey, additional questions will be requested for the ARMS Phase III Cost and Returns Report. These questions will focus on a) bio-energy crop adoption and production expenses, and b) impact of tobacco program changes on tobacco marketing. Thus, in 2009, NASS will not publish the 2008 Field Crops Chemical Use report which would have resulted from a 2008 ARMS Phase II Survey.

DATES: Comments on this notice must be received by May 5, 2008 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0235, by any of the following methods:

- *E-mail: ombofficer@nass.usda.gov*. Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD-ROM submissions to: NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 A, Mail Stop 2024, South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 A South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Resources Management Survey and Chemical Use Surveys.

OMB Control Number: 0535–0218.

Expiration Date of Approval: September 30, 2008.

Type of Request: Intent to revise and extend a currently approved information collection.

Abstract: The Agricultural Resource Management Survey (ARMS) is the primary source of information for the U.S. Department of Agriculture on a broad range of issues related to agricultural resource use and costs and farm sector financial conditions. ARMS is the only source of information available for objective evaluation of many critical issues related to agriculture and the rural economy, such as: whole farm finance data including data sufficient to construct estimates of income for farms by; type of operation, loan commodities, income for operator households, credit, structure, and organization; marketing information, and other economic data on input usage, production practices, and crop substitution possibilities.

Data from ARMS are used to produce estimates of net farm income by type of commercial producer as required in 7 U.S.C. 7998 and estimates of enterprise production costs as required in 7 U.S.C. 1441(a). Data from ARMS are also used as weights in the development of the Prices Paid Index, a component of the

Parity Index referred to in the Agricultural Adjustment Act of 1938. These indexes are used to calculate the annual federal grazing fee rates as described in the Public Rangelands Improvement Act of 1978 and Executive Order 12,548 and as promulgated in regulations found at 36 CFR 222.51. In addition, ARMS is used to produce estimates of sector-wide production expenditures and other components of income that are used in constructing the estimates of income and value-added which are transmitted to the U.S. Department of Commerce, Bureau of Economic Analysis, by the USDA Economic Research Service (ERS) for use in constructing economy-wide estimates of Gross Domestic Product. This transmittal of data, prepared using the ARMS, is undertaken to satisfy a 1956 agreement between the Office of Management and Budget and the Departments of Agriculture and Commerce that a single set of estimates be published on farm income.

The following two scheduling changes will be requested. First, chemical use surveys are only requested for fall 2010 to include fruit and postharvest. Thus, no vegetable chemical use survey will be requested. Second, in 2008 only, in lieu of the fall ARMS Phase II Survey, additional questions will be requested for the ARMS Phase III Cost and Returns Report.

Chemical Use Surveys: Congress has mandated that NASS and ERS build nationally coordinated databases on agricultural chemical use and related farm practices; these databases are the primary vehicles used to produce specified environmental and economic estimates. The surveys will help provide the knowledge and technical means for producers and researchers to address on-farm environmental concerns in a manner that maintains agricultural productivity.

The following two scheduling changes will be requested. First, chemical use surveys are only requested for fall 2010 to include fruit and postharvest. Thus, no vegetable chemical use survey will be requested. Second, in 2008 only, in lieu of the fall ARMS Phase II Survey, additional questions will be requested for the ARMS Phase III Cost and Returns Report.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13 codified at 44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average approximately 36 minutes per survey.

Respondents: Farmers, ranchers, farm managers, farm contractors, and farm households.

Estimated Number of Respondents: Approximately 61,000 respondents will be sampled each year. Over half of these respondents will be contacted more than one time in a single year.

Estimated Total Annual Burden on Respondents: Approximately 65,000 hours per year. Copies of this information collection and related instructions can be obtained without charge from the NASS Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, February 19, 2008.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E8–4082 Filed 3–3–08; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Weather Modification Activities Reports.

OMB Approval Number: 0648–0025.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 55.

Number of Respondents: 55.

Average Hours Per Response: 30 minutes.

Needs and Uses: Weather Modification Activities Reports are required by Public Law-92–205, Section 6(b). All entities which engage in weather modification (e.g. cloud-seeding to enhance precipitation or disperse fog) are required to report various data to NOAA. NOAA maintains the data for use in scientific research, historical statistics, international reports, and other purposes.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; individuals or households; State, Local or Tribal Government.

Frequency: On occasion and annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: February 28, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–4092 Filed 3–3–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Sea Grant Program Application Requirements for Grants, for Sea Grant

Fellowships and for Designation as a Sea Grant College or Regional Consortium.

OMB Control Number: 0648–0362.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 857.

Number of Respondents: 162.

Average Hours Per Response: Control forms, 30 minutes; program record forms, 20 minutes; budget forms, 15 minutes; applications for designation as a Sea Grant college or regional consortium, 20 hours; and fellowship applications, 2 hours.

Needs and Uses: Applications are required for the designation of a public or private institution of higher education, institute, laboratory, or State or local agency as a Sea Grant college or Sea Grant institute. Applications are also required in order to be awarded a Sea Grant Fellowship, including the Dean John A. Knauss Marine Policy Fellowships. The grant monies are available for funding activities that help attain the objectives of the Sea Grant Program. In addition to the SF–424 and other standard grant application requirements, three NOAA forms are required with a grant application. These are the Sea Grant Control Form, used to identify the organizations and personnel who would be involved in the grant; the Project Record Form, which collects summary data on projects; and the Sea Grant Budget Form (used in place of the SF–424A or SF–424C).

Affected Public: Not-for-profit institutions; individuals or households.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Fax number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: February 28, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–4093 Filed 3–3–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

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

EFFECTIVE DATE: (March 4, 2008.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Benjamin Caryl, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–3003, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2007, the Department of Commerce (''the Department'') published the initiation of the administrative review of the antidumping duty order on folding metal tables and chairs from the People's Republic of China (''PRC''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 41057 (July 26, 2007). This review covers the period June 1, 2006, through May 31, 2007. The preliminary results of review are currently due no later than March 1, 2008.

Extension of Time Limit for Preliminary Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results of the administrative review of folding metal tables and chairs from the PRC within this time limit. Specifically, due to complex issues related to the selection of surrogate values, we find that additional time is needed to complete these preliminary results. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by 90 days until May 30, 2008.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 27, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–4130 Filed 3–3–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Notice of Amended Final Results in Accordance With Court Decision: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People(s Republic of China

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

EFFECTIVE DATE: March 4, 2008.

SUMMARY: On November 20, 2007, the U.S. Court of International Trade (''CIT'') sustained the remand redetermination issued by the Department of Commerce (''the Department'') pursuant to the CIT's remand of the final results of the twelfth administrative review of the antidumping duty orders on heavy forged hand tools from the People's Republic of China (''PRC''). *See Shandong Huarong Machinery Co. Ltd., Shandong Machinery Import & Export Corporation, Liaoning Machinery Import & Export Corporation, and Tianjin Machinery Import & Export Corporation v. United States*, Slip Op. 07–169 (CIT, 2007) (''*Shandong Huarong II*''). The CIT issued the public version of *Shandong Huarong II* on January 8, 2008. The period of review (''POR'') for the twelfth review is February 1, 2002, through January 31, 2003.

In its redetermination, the Department assigned dumping margins to sales of (1) bars/wedges by Shandong Huarong Machinery Corporation Limited (''Huarong''); (2) bars/wedges by Liaoning Machinery Import & Export Corporation/Liaoning Machinery Import & Export Corporation Ltd. (collectively ''LMC/LIMAC''); (3) bars/wedges by Shandong Machinery Import & Export Corporation (''SMC''); and (4) axes/adzes, bars/wedges, hammers/sledges,

and picks/mattocks by Tianjin Machinery Import & Export Corporation (''TMC''). As there is now a final and conclusive court decision in this case which is not in harmony with the underlying results of the disputed administrative review, the Department is amending the final results of the 2002–2003 antidumping duty administrative review of heavy forged hand tools from the PRC.

FOR FURTHER INFORMATION CONTACT: Tom Martin, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3936.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 2004, the Department published its final results of antidumping duty administrative review. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not to Revoke in Part*, 69 FR 55581 (September 15, 2004) (''*Final Results*''). In its *Final Results* the Department calculated antidumping duty margins for Huarong, LMC/LIMAC, SMC, and TMC. On September 16, 2004, the four respondents filed a summons with the CIT, and on September 20, 2004, they filed a complaint with the CIT in which they identified the aspects of the *Final Results* they are challenging. On September 17, 2004, the petitioner, Ames True Temper ((Ames(), submitted comments alleging that the Department made certain ministerial errors in the Final Results. On September 28, 2004, the Department requested a voluntary remand to consider certain ministerial error allegations raised by the parties. The CIT granted the Department(s request on November 3, 2004, and ordered the Department to address the alleged ministerial errors (without issuing a slip opinion). The Department corrected certain errors and published amended final results on December 1, 2004. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Notice of Amended Final Results of Antidumping Duty Administrative Reviews*, 69 FR 69892 (December 1, 2004).

In *Shandong Huarong Machinery Co. Ltd., Liaoning Machinery Import & Export Corp. Ltd., Shandong Machinery Import & Export Corp., and Tianjin Machinery Import & Export Corp. v. United States and Ames True Temper*, Court No. 04(00460, Slip Op. 06–88 (June 9, 2006) (''*Shandong Huarong I*''), the CIT remanded the underlying final results of review to the Department to: (1) Explain why the failure of Huarong and TMC to report information on scrapers and forged tampers, respectively, justifies the use of total adverse facts available (''AFA''), rather than just partial AFA, pursuant to sections 776(a) and (b) of the Tariff Act of 1930 (the ''Act''), for the axes/adzes order for Huarong and the bars/wedges order for TMC; (2) provide a factual basis showing that the rate calculated for TMC is a reasonable estimate of its actual rate plus an added amount to encourage cooperation; (3) explain how the Department(s commercial quantities methodology fulfills the purpose of 19 CFR 351.222(e)(1), in relation to its refusal to revoke SMC from the hammers/sledges order; (4) analyze further the issue of valuation of steel pallets manufactured by certain hand tool factories; (5) revisit its decision that certain miscellaneous handling expenses are not included in the surrogate price of foreign brokerage and handling and, if the Department continues to find that the handling expenses in question are not in the surrogate price of brokerage and handling, to provide a thorough explanation; (6) explain why its decision to analyze market economy (''ME'') purchases of ocean freight in aggregate is reasonable; and (7) explain further its decision to deny the request for a circumstance of sale ((COS() adjustment to TMC's normal value (''NV'').

The Department released the *Draft Results of Redetermination Pursuant to Court Remand* to the petitioner and the respondents for comment on December 15, 2006. The Department received comments from both Ames and the respondents on December 29, 2006. On January 12, 2007, the Department issued to the CIT its final results of redetermination pursuant to *Shandong Huarong I. See Final Results of Redetermination Pursuant to Court Remand*, Court No. 04–00460 (January 12, 2007) found at http://ia.ita.doc.gov/remands/06–88.pdf. In the remand redetermination the Department did the following: (1)(i) explained that AFA was applied to all of Huarong's sales of axes/adzes, pursuant to sections 776(a) and (b) of the Act, because it failed to report requested information regarding its production and sales of scrapers, which are subject to the axes/adzes order; (1)(ii) explained that total AFA was applied to TMC's sales of bars/wedges because, in part, it failed to report its sales of forged tampers, which are subject to the bars/wedges order; (2) redetermined an AFA rate for TMC's sales of merchandise covered by the bars/wedges order; (3) explained that the period of investigation sales quantity is a valid benchmark for determining whether the respondent sold in commercial quantities because it represents the respondent(s behavior without the discipline of an antidumping order; (4) included in the Department(s calculation of NV the cost of labor and welding rod consumed in making steel pallets; (5) examined the record of *Stainless Steel Wire Rod From India; Final Results of Administrative Review*, 63 FR 48184 (September 9, 1998), and concluded that the brokerage and handling surrogate value included all expenses noted by the petitioner, except those that the record does not show were incurred; (6) chose to continue to apply the respondents' average ME ocean freight expense to sales shipped with non–market economy carriers; and (7) continued to deny the petitioner's request for a COS adjustment to TMC's NV because there was insufficient detail to determine whether there was a correlation between the expenses incurred by TMC and the surrogate producer. Based on the above redeterminations, the Department recalculated the antidumping duty rates applicable to SMC's sale of bars/wedges and TMC's sales of axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks as a result of the Department(s modifications to NV. The Department made no change to the antidumping duty rates of Huarong's and LMC/LIMAC's sales of bars/wedges. On November 20, 2007, the CIT sustained all aspects of the remand redetermination made by the Department pursuant to the CIT's remand of the *Final Results*. *See Shandong Huarong II*. The CIT issued the public version of *Shandong Huarong II* on January 8, 2008.

Consistent with the decision made by the Court of Appeal for the Federal Circuit (''CAFC'') in *Timken Company v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990), on January 17, 2008, the Department published a ''Notice of Court Decision Not in Harmony with Final Results of Administrative Review,'' which continued suspension of liquidation of the subject merchandise until there was a (final and conclusive(decision in this case. *See Heavy Forged Hand Tools From the People's Republic of China: Notice of*

Court Decision Not in Harmony With Final Results of Administrative Review, 73 FR 3236 (January 17, 2008). On January 20, 2008, the opportunity to appeal the CIT's decision to the CAFC expired. Since no party has appealed this decision to the CAFC, the CIT's decision upholding the Department's remand redetermination is final and conclusive.

Amended Final Results

The time period for appealing the CIT's final decision to the CAFC has expired and no party has appealed this decision. As there is now a final and conclusive court decision with respect to litigation for Huarong, LMC/LIMAC, SMC, and TMC, we are amending the final results of review to reflect the findings of the remand results, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''). The amended weighted–average margins are as follows:

Exporter	Weighted–Average Margin (Percent)
Shandong Huarong Machinery Corporation Limited (Huarong).	
Bars/Wedges	139.31
Liaoning Machinery Import & Export Corporation (LMC)/.	
Liaoning Machinery Import & Export Corporation Ltd. (LIMAC).	
Bars/Wedges	139.31
Shandong Machinery Import & Export Corporation (SMC).	
Bars/Wedges	4.05
Tianjin Machinery Import & Export Corporation (TMC).	
Axes/Adzes	10.39
Bars/Wedges	139.31
Hammers/Sledges	6.38
Picks/Mattocks	4.61

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates. Where the importer–specific assessment rate is above *de minimis* on an *ad valorem* basis, calculated by dividing the dumping margins found on examined subject merchandise by the estimated entered value, we will instruct CBP to assess antidumping duties on that importer(s entries of subject merchandise. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer–specific assessment rate is *de minimis (i.e.*, less than 0.5 percent *ad valorem*). Since the actual entered value of the merchandise was not reported to the Department, we have divided, where applicable, the total dumping margins (calculated as the difference between NV and export price) for each importer by the total number of units sold to the importer. We will direct CBP to assess the resulting unit dollar amount against each unit of subject merchandise entered by the importer during the POR. The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of these amended final results of review.

This notice is published in accordance with section 516A(e) of the Act.

Dated: February 26, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–4128 Filed 3–3–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: March 4, 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.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2007 the Department of Commerce (''the Department'') initiated an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished (''TRBs''), from the People's Republic of China (''PRC'') for the period June 1, 2006 through May 31, 2007. The preliminary results of this review are currently due no later than March 1, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 41057 (July 26, 2007).

Extension of Time Limit of Preliminary Results.

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue preliminary results within 245 days after the last day of the anniversary month of an order. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 365 days. Completion of the preliminary results of this review within the 245-day period is not practicable because the Department needs additional time to analyze information pertaining to the respondents' reporting methodology with respect to U.S. sales, to evaluate certain issues raised by the petitioners, and to issue and review responses to supplemental questionnaires.

Because it is not practicable to complete this review within the time specified under the Act, we are fully extending the time period for issuing the preliminary results of review to 365 days until June 29, 2008, in accordance with section 751(a)(3)(A) of the Act. Because this deadline falls on a weekend, the appropriate deadline is the next business day (*i.e.*, Monday). Therefore, we will issue the preliminary results no later than June 30, 2008. The final results continue to be due 120 days after the publication of the preliminary results. This notice is published

pursuant to sections 751(a) and 777(i) of the Act.

Dated: February 27, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–4127 Filed 3–3–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Evacuation Movement and Behavior Questionnaires

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 5, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Erica Kuligowski, *erica.kuligowski@nist.gov*, 301–975–2309.

SUPPLEMENTARY INFORMATION:

I. Abstract

NIST will be collecting data on evacuation behavior and movement of occupants from approximately 50 high-rise buildings' evacuation drills in cities across the United States at a rate of several buildings per year. The high-rise buildings of interest include buildings of varying heights (e.g., 1–10 stories, 11–20 stories, 21–35 stories, and 35+ stories) and of varying occupancy types (e.g., residential, office, and assembly occupancies).

The proposed data collection will consist of questionnaires that will be distributed, by city or building's fire department staff or NIST staff, to occupants who have evacuated previously-identified high-rise buildings as a part of a scheduled evacuation drill. The purpose of these questionnaires is to obtain information (anonymously) on: (1) The background of the occupant (occupant demographics, previous training and education in fire safety, and previous experience in fire evacuations); (2) actions and decisions made by the occupant on his/her floor during the building evacuation; and (3) actions and decisions made by the occupant during the building evacuation via the stairs and/or elevators. This information is necessary to better inform building and life safety code requirements, building occupant education and training about fire safety, and tools that are currently used to assess the life safety of high-rise buildings in the United States.

II. Method of Collection

This data will be collected via paper questionnaires. Either fire department staff will collect the questionnaires from the buildings or each questionnaire will be equipped with an NIST-address-stamped envelope and pre-paid postage.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Annual Number of Respondents: 6,666.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 1,111.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 28, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–4077 Filed 3–3–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of jointly owned invention available for licensing.

SUMMARY: The invention listed below is jointly owned by the U.S. Government as represented by the Department of Commerce, and Cree Inc. The invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 222, Room A155, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, fax 301–975–3482, or e-mail: *mary.clague@nist.gov.* Any request for information should include the NIST Docket number and title for the invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is: [NIST DOCKET NUMBER: 06–008]

Title: Power Switching Semiconductor Devices Including Rectifying Junction-Shunts.

Abstract: Typical applications for switching power devices (e.g., IGBT or Power MOSFET) require reverse conduction for rectification or clamping by either an internal or external diode. Because Power MOSFETs have an inherent PiN diode within the structure, this internal diode must either be made to work effetely for the rectification and clamping, or must be bypassed by an external diode. Because the inherent internal PiN diode results in majority

carrier injection from the drain-body junction (PN junction at Body-to-Drift-Layer interface) it has slow reverse recovery time and may result in SiC crystal degradation. The concept of inclusion of reverse conducting SIR junction shunts provides substantial benefits by: (1) Bypassing current flow from the inherent internal drain-body junction preventing it from injecting majority carriers and thus preventing slow reverse recovery and crystal degradation, and (2) enabling current to flow for voltages lower than the drain-body junction built in potential (e.g., approximately 3 V for SiC) and thus provides lower on-state losses than a PiN diode for the lower current range condition.

Dated: February 27, 2008.

Richard F. Kayser,

Acting Deputy Director.

[FR Doc. E8–4135 Filed 3–3–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Vessel and Gear Marking

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before *May 5, 2008*.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael Clark, 301–713–2347 or *Michael.Clark@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under current regulations at 50 CFR 635.6, fishing vessels permitted for Atlantic Highly Migratory Species must display their official vessel numbers on their vessels. Flotation devices attached to certain fishing gears must also be marked with the vessel's number to identify which vessel is responsible for the gear. These requirements are necessary for law enforcement and monitoring purposes.

Specifically, all vessels owners that hold a valid Highly Migratory Species (HMS) permit, other than an HMS angling permit, are required to mark their vessels with their vessel identification number. The numbers should be permanently affixed to, or painted on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft. Furthermore, fishermen that use longline gear must mark high-flyers and terminal buoys with their vessel identification number. The gillnet fishermen must mark their terminal buoys, and handgear or harpoon fishermen must mark all buoys attached to their gear with their vessel identification number. Buoy gear fishermen must mark all flotation devices attached to certain fishing gears.

II. Method of Collection

There is no form under this requirement. Official vessel numbers issued to vessel operators are marked on the vessel and on flotation devices attached to certain fishing gears, if applicable.

III. Data

OMB Control Number: 0648–0373.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 7,842.

Estimated Time per Response: 45 minutes to mark a vessel and 15 minutes to mark a flotation device.

Estimated Total Annual Burden Hours: 6,954.

Estimated Total Annual Cost to Public: $286,040.

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 27, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–4075 Filed 3–3–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Data Collection on Marine Protected and Managed Areas

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 5, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Joseph A. Uravitch, 301–563–1195 or *joseph.uravitch@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Executive Order 13158 directs the Department of Commerce and the Department of the Interior (DOI) to work with partners to strengthen the

protection of U.S. oceans and coastal resources by developing a national system of marine protected areas. The Departments of Commerce and the Interior plan to work closely with state, territorial, local, and tribal governments, as well as other stakeholders, to identify and inventory the Nation's existing marine protected areas. Toward this end, the National Oceanic and Atmospheric Administration (NOAA) and DOI have created a data form, available on a password-protected Web site, to be used as a survey tool to collect and analyze information on these existing sites. This survey will allow NOAA and DOI to better understand the existing protections for marine resources within marine protected areas in the United States. This information also would support activities on marine protected areas by state and local governments, tribes, and other interested parties. The survey contains directed questions regarding the location, management and enforcement authorities, types of protections and restrictions, and the length of time those protections or restrictions are in place for each marine protected area. Basic information about the resources and activities at the sites will also be collected. It is expected that site managers from each marine protected area will fill out the survey. The collected information will be housed in a searchable database that will be made available to the public via the marine protected area Web site at mpa.gov. The survey has been used for the last six years and this notice proposes to extend the data collection OMB approval.

II. Method of Collection

The information will be collected using a data form.

III. Data

OMB Control Number: 0648–0449.
Form Number: None.
Type of Review: Regular submission.
Affected Public: State, local or tribal governments.
Estimated Number of Respondents: 500.
Estimated Time per Response: 5 hours.
Estimated Total Annual Burden Hours: 2,500.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 27, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–4076 Filed 3–3–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Extension of Application Period for Vacancies on the Channel Islands National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Channel Islands National Marine Sanctuary (CINMS) is seeking applicants for the Chumash Community member and alternate vacant positions on its Sanctuary Advisory Council (Council). Applicants are chosen based upon: their particular expertise and experience in relation to the seat for which they are applying, community and professional affiliations, views regarding the protection and management of marine resources, and the length of residence in the communities located near the Sanctuary. Applicants who are chosen as members should expect to serve in a volunteer capacity for 2-year terms, pursuant to the Council's Charter.

DATES: The applicant period has been extended and applications are now due by April 18, 2008.

ADDRESSES: Application materials are available at: *http://www.channelislands.noaa.gov/sac/news.html.* Completed applications should be sent to *Danielle.lipski@noaa.gov.* Application kits may also be obtained from Dani Lipski, Channel Islands National Marine Sanctuary, 113 Harbor Way Suite 150 Santa Barbara, CA 93109–2315.

FOR FURTHER INFORMATION CONTACT: Michael Murray, Channel Islands National Marine Sanctuary, 113 Harbor Way Suite 150 Santa Barbara, CA 93109–2315, 805–966–7107 extension 464, *michel.murray@noaa.gov.*

SUPPLEMENTARY INFORMATION: The CINMS Advisory Council was originally established in December 1998 and has a broad representation consisting of 21 members, including ten government agency representatives and eleven members from the general public. The Council functions in an advisory capacity to the Sanctuary Superintendent. The Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the National Marine Sanctuary Program. Specifically, the Council's objectives are to provide advice on: (1) Protecting natural and cultural resources and identifying and evaluating emergent or critical issues involving Sanctuary use or resources; (2) Identifying and realizing the Sanctuary's research objectives; (3) Identifying and realizing educational opportunities to increase the public knowledge and stewardship of the Sanctuary environment; and (4) Assisting to develop an informed constituency to increase awareness and understanding of the purpose and value of the Sanctuary and the National Marine Sanctuary Program.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program).

Dated: February 25, 2008.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 08–918 Filed 3–3–08; 8:45 am]

BILLING CODE 3510–13–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by G. Walter Swain

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of Appeal.

SUMMARY: This announcement provides notice that Mr. G. Walter Swain has filed an administrative appeal with the Department of Commerce asking that the Secretary override the State of Delaware's objection to Mr. Swain's proposed construction of a marina and associated structures at the confluence of Cedar Creek and Mispillion River, in Milford, Delaware.

ADDRESSES: Materials from the appeal record will be available at the NOAA Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 and on the following Web site: *http://www.ogc.doc.gov/czma.htm.*

FOR FURTHER INFORMATION CONTACT: Thomas Street, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–7390, *thomas.street@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

On February 4, 2008, Mr. G. Walter Swain filed notice of an appeal with the Secretary of Commerce (Secretary), pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.,* and implementing regulations found at 15 CFR Part 930, Subpart H. Mr. Swain appealed an objection by the State of Delaware in the proposed construction of a marina and associated structures of the confluence of Cedar Creek and Mispillion River, in Milford, Delaware.

Under the CZMA, the Secretary may override Delaware's objection on grounds that the project is consistent with the objectives of the CZMA or otherwise necessary in the interest of national security. To make the determination that the proposed activity is consistent with the objectives of the CZMA, the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of Delaware's coastal management program. 15 CFR 930.121.

II. Opportunity for Federal Agency and Public Comment

Pursuant to regulation, the public and interested Federal agencies may submit any comments on this appeal from May 1, 2008–May, 30, 2008. All comments should be directed in writing to Thomas Street, attorney advisor, at the NOAA Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 or via electronic mail to *thomas.street@noaa.gov.*

III. Appeal Documents

NOAA intends to provide the public with access to all publicly available materials and related documents comprising the appeal record during business hours, at the NOAA Office of General Counsel for Ocean Services.

For additional information about this appeal, please contact Thomas Street, 301–713–7390 or *thomas.street@noaa.gov.*

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

Dated: February 26, 2008.

Joel La Bissonniere,

Assistant General Counsel for Ocean Services.

[FR Doc. 08–917 Filed 3–03–08; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF67

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: NMFS announces free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops to be held in April, May, and June 2008. Fishermen and shark dealers are required to attend a workshop to meet new regulatory requirements and maintain valid permits. The Atlantic Shark Identification Workshops are mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshops are mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and have also been issued shark or swordfish limited access permits. Additional free workshops will be held in 2008 and announced in the **Federal Register**.

DATES: The Atlantic Shark Identification Workshops will be held April 24, May 22, and June 19, 2008.

The Protected Species Safe Handling, Release, and Identification Workshops will be held April 8, May 21, and June 18 and 25, 2008.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Tampa, FL; Wilmington, NC; and Jefferson, LA.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Gulfport, MS; Kitty Hawk, NC; Indian Rocks Beach, FL; and Manahawkin, NJ.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Greg Fairclough by phone:(727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/*.

Atlantic Shark Identification Workshop

Effective December 31, 2007, an Atlantic shark dealer may not receive, purchase, trade, or barter for Atlantic shark unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop will be issued a certificate for each place of business that is permitted to receive sharks.

Dealers may send a proxy to an Atlantic Shark Identification Workshop, however, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit. Only one certificate will be issued to each proxy. A proxy must be a person who: is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports. Additionally, after December 31, 2007, an Atlantic shark dealer may not renew a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location has been submitted with the permit renewal application. Sixteen free Atlantic Shark Identification Workshops were held in 2007.

Workshop Dates, Times, and Locations

1. April 24, 2008, from 10:30 a.m. - 3:30 p.m. North Tampa Branch Library, 8916 North Boulevard, Tampa, FL 33604.

2. May 22, 2008, from 9:30 p.m. - 3 p.m. Northeast Regional Library, 1241 Military Cutoff Road, Wilmington, NC 28405.

3. June 19, 2008, from 10 a.m. - 3:30 p.m. Rosedale Library, 4036 Jefferson Highway, Jefferson, LA 70121.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander by email at *esander@peoplepc.com* or by phone at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following items to the workshop:

Atlantic shark dealer permit holders must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.

Atlantic shark dealer proxies must bring documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer, a copy of the appropriate permit, and proof of identification.

Workshop Objectives

The shark identification workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshop

Effective January 1, 2007, shark limited access and swordfish limited access permit holders must submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). As such, vessel owners who have not attended a workshop and received a NMFS certificate must attend one of the workshops offered in April, May, or June 2008 to fish with or renew either permit. Additionally, new shark and swordfish limited access permit applicants must attend a Protected Species Safe Handling, Release, and Identification Workshop and must submit a copy of their workshop certificate before such permits will be issued.

In addition to certifying permit holders, all longline and gillnet vessel operators fishing on a vessel issued a limited access swordfish or limited access shark permit are required to attend a Protected Species Safe Handling, Release, and Identification Workshop. Vessels that have been issued a limited access swordfish or limited access shark permit may not fish unless both the vessel owner and operator have valid workshop certificates. Vessel operators must possess on board the vessel valid workshop certificates for both the vessel owner and the operator at all times. Seven free Protected Species Safe Handling, Release, and Identification Workshops were held in 2006, and 34 were held in 2007.

Workshop Dates, Times, and Locations

1. April 8, 2008, from 9 a.m. - 5 p.m. Magnolia Plantation Hotel, 16391 Robinson Road, Gulfport, MS 39503.

2. May 21, 2008, from 9 a.m. - 5 p.m. Hilton Garden Inn, 5353 N. Virginia Dare Trail, Kitty Hawk, NC 27949.

3. June 18, 2008, from 9 a.m. - 5 p.m. Holiday Inn Harborside & Gulfview Beach Resort, 401 2nd Street, Indian Rocks Beach, FL 33795.

4. June 25, 2008, from 9 a.m. - 5 p.m. Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Aquatic Release Conservation ((877) 411–4272), 1870 Mason Ave., Daytona Beach, FL 32117.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following items with them to the workshop:

Individual vessel owners must bring a copy of the appropriate permit(s), a copy of the vessel registration or documentation, and proof of identification.

Representatives of a business owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit(s), and proof of identification.

Vessel operators must bring proof of identification.

Workshop Objectives

The protected species safe handling, release, and identification workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. Identification of protected species will also be taught at these workshops in an effort to improve reporting. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal for these workshops is to provide participants the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Grandfathered Permit Holders

Participants in the industry–sponsored workshops on safe handling and release of sea turtles that were held in Orlando, FL (April 8, 2005) and in New Orleans, LA (June 27, 2005) were issued a NOAA workshop certificate in December 2006 that is valid for three years. Grandfathered permit holders must include a copy of this certificate when renewing limited access shark and limited access swordfish permits each year. Failure to provide a valid NOAA workshop certificate may result in a permit denial.

Dated: February 27, 2008.

James P. Burgess

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

[FR Doc. E8–4126 Filed 3–3–08; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 20 March 2008, at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov*. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S.

Commission of Fine Arts, at the above address, or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date. Dated in Washington DC, 29 February 29, 2008.

Thomas Luebke, AIA,

Secretary.

[FR Doc. 08–927 Filed 3–3–08: 8:45 am]

BILLING CODE 6330–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the proposed renewal and revision of its AmeriCorps*VISTA Project Progress Report (OMB Control Number 3045–0043). The previously approved Progress Report will expire on October 1, 2008.

This reinstatement with changes reflects the Corporation's intent to modify selected sections of the collection instrument to reduce the burden on respondents and to reflect changes in data considered ''core reporting'' information to meet a variety of needs, including adding new data elements as needed to ensure information collection captures appropriate data for the Corporation's required performance measurement and other reporting.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 5, 2008.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service; Attn, Craig Kinnear, Program Analyst, Room 9103A; 1201 New York Avenue, NW., Washington DC, 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 565–2789, Attention Craig Kinnear, Program Analyst.

4) *Electronically through the Corporation's e-mail address system: ckinnear@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Craig Kinnear, (202) 606–6708, or by e-mail at *ckinnear@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The Progress Report (PPR) was designed to assure that Americorps*VISTA sponsors address and fulfill legislated program purposes, meet agency program management and grant requirements, and assess progress toward project plan goals agreed upon in the signing of the Memorandum of Agreement.

Current Action

The Corporation seeks to revise the previously used PPR to: (a) Reduce respondent burden; (b) enhance data collected via this information collection tool; (c) establish reporting periods consistent with the Corporation's integrated grants management and reporting policies.

The current PPR is used by Americorps*VISTA sponsors and grantees to report progress toward accomplishing work plan goals and objectives, reporting actual outcomes related to self-nominated performance measures meeting challenges encountered, describing significant activities, and requesting technical assistance. The PPR is also used to collect demographic data elements used by the Corporation for aggregate reporting purposes. Submissions of the PPR are done quarterly.

The revised PPR will be divided into two separate parts in order to reduce burden and to increase data integrity. All demographic data elements will be removed from the quarterly submissions and added to an annual VISTA Progress Report Supplement (VPRS) due 30 days after the end of the fiscal year. The quarterly reports will retain their purpose of providing monitoring and oversight of individual projects, while the annual data collection will serve the purpose of aggregate performance reporting for the VISTA program. Burden will be reduced by collecting the demographic data elements once a year instead of quarterly. Data integrity will be increased by tying data elements to specific fiscal years rather than project reporting cycles.

The Corporation anticipates making available to all AmeriCorps*VISTA sponsors and grantees both sections of the revised PPR by July 1, 2008.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Americorps*VISTA Program Progress Report (PPR).

OMB Number: 3045–0043.

Agency Number: None.

Affected Public: AmeriCorps*VISTA and sponsoring organizations, site supervisors, and members.

Total Respondents: 1,100.

Frequency: Quarterly for the PPR; annually for the VPRS.

Average Time Per Response: 7 hours for the PPR; 9 hours for the VPRS.

Estimated Total Burden Hours: 40,700 hours for both the PPR and VPRS.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the

information collection request; they will also become a matter of public record.

Dated: February 27, 2008.

Carol Rogers,

*Acting Director, Americorps*VISTA.*

[FR Doc. E8–4133 Filed 3–3–08; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning annual reports provided by recipients of Program Development and Training grants, and Disability Inclusion grants. Applicants will respond to the questions included in this ICR in order to report on their use of federal funds and progress against their annual plan.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 5, 2008.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service; Attention Amy Borgstrom, Associate Director for Policy, Room 9515; 1201 New York Avenue, NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3476, Attention Amy Borgstrom, Associate Director for Policy.

(4) Electronically through the Corporation's e-mail address system: *aborgstrom@cns.gov*.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 606–6930, or by e-mail at *aborgstrom@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

These application instructions will be used by grantees to report on their use of Program Development and Training grants, and Disability Inclusion grants. These grants are provided to state commissions to support capacity building for their subgrantees and disability inclusion efforts. The annual report is submitted electronically using eGrants, the Corporation's Web-based grants management system, or submitted via e-mail. This information collection instructs applicants to respond to a total of six questions.

Current Action

Program Development and Training and Disability Inclusion Annual Report

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Program Development and Training and Disability Inclusion Annual Report

OMB Number: None.

Agency Number: None.

Affected Public: State commissions for national and community service.

Total Respondents: 54.

Frequency: Annual.

Average Time Per Response: Averages 8 hours.

Estimated Total Burden Hours: 432 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 25, 2008.

Kimberly Mansaray,

Chief of Staff, AmeriCorps State and National.

[FR Doc. E8–4138 Filed 3–3–08; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

United States Marine Corps; Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, DoD.

ACTION: Notice to delete a system of records notices.

SUMMARY: The U.S. Marine Corps is deleting a system of records notices from its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: Effective March 4, 2008.

ADDRESSES: Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (CMC–ARSE), 2 Navy Annex, Room 1005, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy D. Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps' records systems notices for records systems 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 U.S. Marine Corps proposes to delete a system of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records 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 new or altered systems reports.

Dated: February 26, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions
MIN00002

SYSTEM NAME:

POW/MIA Intelligence Analysis and Debrief Files.

REASON:

DUSDP 11—POW/Missing Personnel Office Files covers the collections all records including operational and informational reports, biographic records, personal statements and correspondence, etc., about all the prisoners of war or missing personnel while affiliated with the Military services of the United States.

Accordingly, since the notices are redundant, MIN00002 is no longer required.

[FR Doc. E8–4086 Filed 3–3–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice Of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 28, 2008.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 28, 2008.

Angela C. Arrington,

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

Federal Student Aid

Type of Review: New.

Title: Federal Family Education Loan (FFEL) School Letter.

Abstract: A letter will be sent via e-mail to approximately 4,500 financial aid administrators at institutions that participate in the Federal Family Educational Loan Program. The purpose of the letter is to inform the financial aid administrators that the Department of Education is monitoring the current uncertainty in the credit markets and the impact of that uncertainty on student loan programs. The letter invites the financial aid administrator to provide the Department with any information he or she has related to any lender that plans to reduce, suspend, or discontinue making student loans. The letter requests this information for both federal and non-federal student loans. The Department will use the information received from the financial aid administrators to prepare an analysis and summary for presentation to the Secretary. The Secretary will use the information to make her decisions related to ensuring the continued availability of educational loans for students and their families.

Additional Information: The Department requests emergency clearance for the approval of a letter that will be sent via e-mail to approximately 4,500 financial aid administrators at institutions that participate in the Federal Family Educational Loan Program. The approval is requested by Thursday, February 28, 2008 since the Secretary plans to send this letter out as soon as possible.

Frequency: One time.

Affected Public: Not-for-profit institutions; State, Local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 500.
Burden Hours: 125.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3630. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–4113 Filed 3–3–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites

comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 5, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 27, 2008.

Angela C. Arrington,

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

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Independent Living for Older Individuals Who Are Blind.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 392.

Burden Hours: 13,720.

Abstract: The data collection instruments being submitted are the annual performance reports for State Independent Living Services (SILS) and Centers for Independent Living (CIL) programs. These are known as the 704 Report Part I and the 704 Report Part II, respectively. These reports are required by sections 704(m)(4)(D), 706(d), 721(b)(3) and 725(c) of the Rehabilitation Act of 1973, as amended (the Act) and the corresponding regulations in 34 CFR parts 364, 365, and 366. Approval of grantees' annual performance reports (704 Report) is a prerequisite for the Rehabilitation Services Administration's (RSA's) approval of the annual SILS grant awards (part B funds) and CILs continuation grant awards (part C funds).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3626. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW, LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–4114 Filed 3–3–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 5, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 27, 2008.

Angela C. Arrington,

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

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: OSERS Peer Review Data Form.

Frequency: On Occasion.

Affected Public: Individuals or household; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 2,500.

Burden Hours: 1,250.

Abstract: The Office of Special Education and Rehabilitative Services (OSERS) Peer Reviewer Data form will be used to support the process of

updating individuals personal information in the OSERS Peer Review Service (PRS) database. The information contained in this database is updated on an annual basis by receiving this form from active peer reviewers used by OSERS.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3628. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–4115 Filed 3–3–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 3, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 26, 2008.

Angela C. Arrington,

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

Office of Postsecondary Education

Type of Review: Revision.

Title: Teacher Quality Enhancement Grants Program (TQE) Scholarship Contract and Teaching Verification Forms on Scholarship Recipients.

Frequency: On Occasion; Semi-Annually; Annually.

Affected Public:

Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,850.

Burden Hours: 3,065.

Abstract: Students receiving scholarships under section 204 of the Higher Education Act of 1965, as amended, Public Law 105–244, incur a service obligation to teach in a high-need school in a high-need local educational agency (LEA). This information collection consists of a contract to be executed when funds are awarded, subsequent addenda for students receiving funds beyond one semester/quarter/term, and a separate teaching verification form to be used by students and high-need school districts, to document the students' compliance with the contract's conditions. The Department of Education (ED) has developed an Internet based, e-authorization certified website that will allow these TQE Grants Program Scholarship forms (Scholarship Terms and Conditions and Scholarship Terms and Conditions Addendum) to be electronically submitted. This Internet-based website will escalate efficiently and will reduce a substantial paper burden of inputing these documents manually.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3472. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–4116 Filed 3–3–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 3, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should

include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 27, 2008.

Angela C. Arrington,

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

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: Department of Education Guidance on the Collection and Reporting of Racial and Ethnic Data about Students, Teachers, and Education Staff.

Frequency: One-time change.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 25,586,106.

Burden Hours: 7,851,257.

Abstract: The Department of Education has published final guidance that provides for the collection and reporting of racial and ethnic data on students, teachers, and education staff. These changes are necessary in order to implement the Office of Management and Budget's 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity. The final guidance applies to the collection of individual-level data and to the reporting of aggregate racial and ethnic data to the Department by educational institutions and other recipients of grants and contracts.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3559. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–4118 Filed 3–3–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 3, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to oira_submission@omb.eop.gov or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 27, 2008.

Angela C. Arrington,

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

Office of Postsecondary Education

Type of Review: New.

Title: Application for Asian American and Native American Pacific Islander-Serving Institutions Program and Native American-Serving Non-Tribal Institution Program.

Frequency: Annually.

Affected Public:

Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 410.

Burden Hours: 410.

Abstract: The programs authorized by the College Cost Reduction and Access Act (CCRAA) include Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI) and the Native American-Serving Non-Tribal Institutions (NASNTI). These programs award discretionary grants to eligible institutions of higher education so that they might increase their self-sufficiency by improving academic programs, institutional management, and fiscal stability. Information is collected under authority of Part J,

section 802, of the CCRAA. The information collection of this discretionary grant application package falls under the Streamlining Plan OMB No. 1890–0001. Collection of information is necessary in order for the Secretary of Education to award these grants under the CCRAA of 2007.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3592. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–4121 Filed 3–3–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 27, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP07–38–004.

Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Company's Refund Report pursuant to Article V of the Stipulation and Agreement for the period 5/15/07 through 8/31/07 in compliance with FERC's Order issued 1/31/08.

Filed Date: 02/26/2008.

Accession Number: 20080227–0063.

Comment Date: 5 p.m. Eastern Time on Monday, March 10, 2008.

Docket Numbers: RP08–207–000.

Applicants: CenterPoint Energy Gas Transmission Comp.

Description: CenterPoint Energy Gas Transmission Company submits Eleventh Revised Sheet 32 *et al.* to FERC Gas Tariff, Sixth Revised Volume 1, to be effective 4/1/08.

Filed Date: 02/22/2008.

Accession Number: 20080225–0264.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 5, 2008.

Docket Numbers: RP08–208–000.

Applicants: Transcontinental Gas Pipe Line Corp.

Description: Transcontinental Gas Pipe Line Corporation submits Fifth Revised Sheet 432 *et al.* to its FERC Gas Tariff, Third Revised Volume 1, to be effective 3/23/08.

Filed Date: 02/22/2008.

Accession Number: 20080225–0263.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 5, 2008.

Docket Numbers: RP08–209–000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company seeks waiver of posting and bidding requirements for permanent release of discounted capacity etc.

Filed Date: 02/25/2008.

Accession Number: 20080226–0101.

Comment Date: 5 p.m. Eastern Time on Monday, March 10, 2008.

Docket Numbers: RP08–210–000.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits First Revised Sheet 14 to FERC Gas Tariff, Fourth Revised Volume 1.

Filed Date: 02/25/2008.

Accession Number: 20080226–0102.

Comment Date: 5 p.m. Eastern Time on Monday, March 10, 2008.

Docket Numbers: OR08–7–000.

Applicants: Texas Access Pipeline Project.

Description: Texas Access Pipeline Project filed a petition for a declaratory order approving the offer of discounted, firm service to committed shippers on 90 percent of the planned monthly capacity of the Texas Access Pipeline.

Filed Date: 02/07/2008.

Accession Number: 20080211–0048.

Comment Date: 5 p.m. Eastern Time Friday, March 7, 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. E8–4094 Filed 3–3–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0053; FRL–8537–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Beryllium Rocket Motor Fuel Firing (Renewal); EPA ICR Number 1125.05, OMB Control Number 2060–0394

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (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 collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before April 3, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2007–0053, to (1) EPA online using *www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: 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: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@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 March 9, 2007 (72 FR 10735), 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 number EPA–HQ–OECA–2007–0053, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Beryllium Rocket Motor Fuel Firing (Renewal)

ICR Numbers: EPA ICR Number 1125.05, OMB Control Number 2060–0394.

ICR Status: This ICR is scheduled to expire on April 30, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for this source category were promulgated on April 6, 1973 and amended on November 7, 1985. These standards establish limits for beryllium. The rule requires subject test sites to test ambient air for beryllium during and after firing a rocket motor. Samples are analyzed within 30 days and results are reported to EPA by registered letter by the business day following the determination and calculation. The rule also requires continuous stack sampling of beryllium combustion products during and after firing a rocket motor, and analysis and reporting within 30 days. In addition, other reporting requirements include notification of anticipated firing date; air quality emissions and ambient air quality and emission test reports. Recordkeeping requirements include air sampling test results, record of emission test results and making these records available to the Agency.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 61, subpart D, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

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 Number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 8 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Beryllium rocket motor fuel firing.

Estimated Number of Respondents: 1.

Frequency of Response: Initially, and on occasion.

Estimated Total Annual Hour Burden: 8.

Estimated Total Annual Cost: $538.00 which includes $0 annualized Capital

Startup costs, $0 annualized Operating and Maintenance (O&M) costs and $538.00 annualized Labor costs.

Changes in the Estimates: There are no changes in the labor hours or costs in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR are used in this ICR and there is no change in burden to industry.

Dated: February 19, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–4106 Filed 3–3–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0056; FRL–8537–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Municipal Waste Combustors (Renewal); EPA ICR Number 1506.11, OMB Control Number 2060–0210

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (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 collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before April 3, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2007–0056, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: 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: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@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 March 9, 2007 (72 FR 10735), 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 number EPA–HQ–OECA–2007–0056 which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NSPS for Municipal Waste Combustors (Renewal).

ICR Numbers: EPA ICR Number 1506.11, OMB Control Number 2060–0210.

ICR Status: This ICR is scheduled to expire on April 30, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standards (NSPS) for Municipal Waste Combustors apply to municipal waste combustors with unit capacities greater than 225 megagrams per day. Owners or operators of the affected facilities must make one-time-only notifications and reports and must keep records of all facilities subject to NSPS requirements. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. The pollutants of concern for subpart Ea are metals, municipal waste combustor (MWC) organics, MWC acid gases, and nitrogen oxides. In subpart Eb the additional pollutants of concern are cadmium (Cd), lead (Pb), and mercury (Hg). Subparts Ea and Eb require owners and operators with unit capacity above 225 megagrams per day to notify the agency of intent to construct and initiate operation of a new, modified or reconstructed MWC. The notification must contain supporting information regarding unit design capacity; the calculations used to determine capacity, and estimated startup dates.

Owners and operators must submit semiannual and annual compliance reports. In addition, facilities subject to subpart Eb are required to keep records of the weekly amount of carbon used for activated carbon injection and to calculate the estimated hourly carbon injection rate for hours of operation as a means of determining continuous compliance for Hg. Annual reports of excess emissions are required under subpart Ea, while semiannual reports of

excess emissions are required under subpart Eb. These notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to the standard.

Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, and the standard is being met. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with the emission standards, and serve as a record of the operating conditions under which compliance was achieved. The information generated by monitoring, recordkeeping and reporting requirements described in this ICR is used by the Agency to ensure that facilities affected by the standard continue to operate the control equipment and achieve continuous compliance with the regulation.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 198 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Municipal waste combustors.

Estimated Number of Respondents: 12.

Frequency of Response: Initially, quarterly, annually and semiannually.

Estimated Total Annual Hour Burden: 20,421.

Estimated Total Annual Cost: $1,635,293 which includes $60,000 annualized capital costs and $99,000 in O&M costs.

Changes in the Estimates: There is no change in the labor hours or cost in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR are used in this ICR and there is no change in burden to industry.

Dated: February 20, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–4149 Filed 3–3–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0127; FRL–8353–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 1, 2008 through January 31, 2008, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before April 3, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0127, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2007–1193. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0127. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or

access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 1, 2008 through January 31, 2008, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 51 PREMANUFACTURE NOTICES RECEIVED FROM: 01/01/08 TO 01/31/08

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0158	01/02/08	03/31/08	CBI	(G) Corrosion inhibitor	(G) Fatty acid amine derivative
P–08–0159	01/02/08	03/31/08	CBI	(G) Corrosion inhibitor	(G) Fatty acid amine derivative
P–08–0160	01/03/08	04/01/08	3M	(G) Intermediate	(G) Aryloxyalcohol
P–08–0161	01/03/08	04/01/08	3M	(G) Monomer	(G) Aryloxyacrylate
P–08–0162	01/02/08	03/31/08	CBI	(S) Intermediate	(G) Fatty acid derivative
P–08–0164	01/08/08	04/06/08	Esstech, Inc.	(S) Cross-linking agent; metal adhesive	(S) 1,2,4,5-benzenetetra carboxylic acid; 1,4-bis(2-((2-methyl-1-oxo-2-propenyl)oxy)ethyl)ester

I. 51 PREMANUFACTURE NOTICES RECEIVED FROM: 01/01/08 TO 01/31/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0165	01/09/08	04/07/08	CBI	(S) Deodorizer for consumer products	(G) Extract of tea
P–08–0166	01/11/08	04/09/08	PPG Industries, Inc.	(G) Component of coating with open use	(G) Trimethoxysilane
P–08–0167	01/11/08	04/09/08	Mitsubishi Chemical Performance Polymers, Inc.	(S) Molding material for agriculture; molding material for food package; material for fiber, monofilament; molding material for construction; material for sheet, film	(G) Alkanedioic acid, polymer with 1,4-butanediol
P–08–0168	01/11/08	04/09/08	CBI	(G) Specialty additive	(G) Potassium humate, polymer with acrylic monomers
P–08–0169	01/14/08	04/12/08	CBI	(G) Crosslinking agent for coatings	(G) Aromatic polyisocyanate, glycol ethers-blocked
P–08–0170	01/14/08	04/12/08	CBI	(G) Crosslinking agent for coatings	(G) Aromatic polyisocyanate, glycol ether and aliphatic alcohol-blocked
P–08–0171	01/14/08	04/12/08	CBI	(G) Crosslinking agent for coatings	(G) Aromatic polyisocyanate, aliphatic diol, glycol ether-blocked
P–08–0172	01/14/08	04/12/08	CBI	(G) Crosslinking agent for coatings	(G) Aromatic polyisocyanate, aliphatic diol, glycol ether-blocked
P–08–0173	01/14/08	04/12/08	CBI	(G) Crosslinking agent for coatings	(G) Aromatic polyisocyanate, glycol ethers-blocked
P–08–0174	01/14/08	04/12/08	CBI	(G) Crosslinking agent for coatings	(G) Aromatic polyisocyanate, aliphatic polyol, glycol ethers-blocked
P–08–0175	01/14/08	04/12/08	CBI	(G) Open non-dispersive (elastomer)	(G) Polyurethane elastomer
P–08–0176	01/15/08	04/13/08	Ineos Olefine and Polymers USA LLC	(S) Catalyst for polyolefins polymerization	(S) Magnesium, bu alc. chloro titanium complexes
P–08–0177	01/14/08	04/12/08	CBI	(G) (1) Property modifier in electronic applications, contained use; (2) Property modifier in polymer composites, contained use	(S) Multi-walled carbon nanotubes
P–08–0178	01/14/08	04/12/08	CBI	(G) Chemical intermediate that is chemically transformed in use	(G) Substituted benzoyl chloride
P–08–0179	01/14/08	04/12/08	CBI	(G) Nucleator for polymers	(G) 1,2,3-propanetricarboxamide derivative
P–08–0180	01/14/08	04/12/08	CBI	(G) Precursor to another chemical substance, destructive use	(G) Salt of condensation product of cyclic diketone
P–08–0181	01/14/08	04/12/08	CBI	(G) Precursor to another chemical substance, destructive use	(G) Substituted benzoic acid
P–08–0182	01/15/08	04/13/08	CBI	(G) Reactant	(G) Acid modified alumina
P–08–0183	01/16/08	04/14/08	CIBA Corporation	(S) High mw pigment dispersant in paints and coatings	(G) Polyethylene gylcol/polyacrylate/vinylpyridine block polymer
P–08–0184	01/16/08	04/14/08	CIBA Corporation	(S) High MW pigment dispersant in paints and coatings	(G) Polyacrylate/vinylpyridine block copolymer
P–08–0185	01/08/08	04/06/08	Advanced Polymer, Inc.	(S) Adhesion promoter for polypropylene	(S) 1-butene, polymer with ethene and 1-propene, maleated
P–08–0186	01/18/08	04/16/08	Colonial Chemical, Inc.	(S) Surfactant for carpet cleaning; surfactant for antifog coating; wetting agent for fiber treatment	(S) D-glucopyranose, oligomeric, decyl octyl glycosides, 3-(dodecyldimethylammonio)-2-hydroxypropyl ethers, chlorides
P–08–0187	01/18/08	04/16/08	Colonial Chemical, Inc.	(S) Surfactant for carpet cleaning; surfactant for antifog coating; wetting agent for fiber treatment	(S) D-glucopyranose, oligomeric, C_{10-16}-alkyl glycosides, 3-(dodecyldimethylammonio)-2-hydroxypropyl ethers, chlorides
P–08–0188	01/18/08	04/16/08	Colonial Chemical, Inc.	(S) Surfactant for carpet cleaning; surfactant for antifog coating; wetting agent for fiber treatment	(S) D-glucopyranose, oligomeric, decyl octyl glycosides, 3-(dimethyloctadecylammonio)-2-hydroxypropyl ethers, chlorides
P–08–0189	01/18/08	04/16/08	Colonial Chemical, Inc.	(S) Surfactant for carpet cleaning; surfactant for antifog coating; wetting agent for fiber treatment	(S) D-glucopyranose, oligomeric, C_{10-16}-alkyl glycosides, 3-(dimethyloctadecylammonio)-2-hydroxypropyl ethers, chlorides
P–08–0190	01/18/08	04/16/08	Colonial Chemical, Inc.	(S) Surfactant for carpet cleaning; surfactant for antifog coating; wetting agent for fiber treatment	(S) D-glucopyranose, oligomeric, C_{10-16}-alkyl decyl octyl glycosides, 2-hydroxy-3-(trimethylammonio)propyl ethers, chlorides
P–08–0191	01/18/08	04/16/08	Cytec Industries Inc.	(G) Antiscalant	(G) Modified polyamine
P–08–0192	01/18/08	04/16/08	Cytec Industries Inc.	(G) Antiscalant	(G) Modified polyamine
P–08–0193	01/18/08	04/16/08	Cytec Industries Inc.	(G) Antiscalant	(G) Modified polyamine

I. 51 PREMANUFACTURE NOTICES RECEIVED FROM: 01/01/08 TO 01/31/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0194	01/22/08	04/20/08	Cytec Industries Inc.	(G) Ink additive	(G) Fatty acids, dimers, polymers with alkenoic acid, polyoxyalkylene and alkyl substituted triol
P–08–0195	01/22/08	04/20/08	Cytec Industries Inc.	(G) Coatings resin	(G) Acrylated aliphatic polyurethane
P–08–0196	01/22/08	04/20/08	CBI	(S) Polyester raw material used in the manufacture of industrial coatings for automotive or metal finishing	(G) Polyester
P–08–0197	01/22/08	04/20/08	CBI	(S) Polyester raw material used in the manufacture of industrial coatings for automotive or metal finishing	(G) Epoxy modified polyester
P–08–0198	01/23/08	04/21/08	Incorez Corporation	(S) Curing agent for epoxy based coatings	(G) Aromatic polyepoxide-polyamine copolymer
P–08–0199	01/23/08	04/21/08	CBI	(S) Additive/filler for polymer composites; support media for industrial catalysts	(G) Carbon
P–08–0200	01/24/08	04/22/08	CBI	(G) (Product 1) Additive for open, non-dispersive use; (Product 2) Coating for open, non-dispersive use	(G) Partially fluorinated amphiphilic condensation polymer
P–08–0201	01/24/08	04/22/08	Supresta U.S. LLC	(S) Flame retardant for engineering resins	(G) Aryl phosphoric acid ester
P–08–0202	01/25/08	04/23/08	3M	(G) Prepolymer	(G) Polyetheramine diisocyanate prepolymer
P–08–0203	01/25/08	04/23/08	CBI	(G) Moisture curing polyurethane adhesive	(G) Isocyanate terminated urethane polymer
P–08–0204	01/23/08	04/21/08	CBI	(G) Dispersant for inorganic materials	(G) Methacrylate copolymer
P–08–0205	01/30/08	04/28/08	CBI	(G) Auxiliary / finishing agent for leather products	(G) Acrylic acid polymer with alkyl acrylate, alkenyl benzene and acryl amide, ammonium salt
P–08–0206	01/30/08	04/28/08	CBI	(G) Interior and exterior coatings	(G) Styrene/acrylate copolymer (carboxylated)
P–08–0207	01/30/08	04/28/08	CBI	(G) Raw material for oil field applications	(G) Substituted styrene copolymer
P–8–0208	01/30/08	04/28/08	CBI	(G) Component of paints	(G) Acrylic styrene polymer
P–08–0209	01/31/08	04/29/08	CIBA Corporation	(S) Antioxidant for polymers	(G) Poly(oxy-1,2-ethanediyl), .alpha.-bis alkyl substituted hydroxyphenyl ester-.omega.-bis alkyl substituted hydroxyphenyl ester

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 5 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 01/01/08 TO 01/31/08

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–08–0002	01/18/08	03/02/08	Cytec Industries Inc.	(G) Antiscalant	(G) Modified polyamine
T–08–0003	01/18/08	03/02/08	Cytec Industries Inc.	(G) Antiscalant	(G) Modified polyamine
T–08–0004	01/18/08	03/02/08	Cytec Industries Inc.	(G) Antiscalant	(G) Modified polyamine
T–08–0005	01/22/08	03/06/08	Cytec Industries Inc.	(G) Ink additive	(G) Fatty acids, dimers, polymers with alkenoic acid, polyoxyalkylene and alkyl substituted triol
T–08–0006	01/22/08	03/06/08	Cytec Industries Inc.	(G) Coatings resin	(G) Acrylated aliphatic polyurethane

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 31 NOTICES OF COMMENCEMENT FROM: 01/01/08 TO 01/31/08

Case No.	Received Date	Commencement Notice End Date	Chemical
P–00–1188	01/30/08	12/27/07	(G) Poly(oxyalkylene)bis(2-maleimidoacetate)
P–04–0009	01/08/08	12/06/07	(G) Alkylbenzene sulfonic acid
P–05–0186	01/14/08	12/31/07	(G) There are 5 chemical substances in this PMN of which 3 are Class I substances and the other 2 are Class II substances. The generic name for each of the 5 chemical susbstances are given below. Class I substances: 1. Reaction product of polyether amine and methyl isobutyl ketone; 2. Reaction product of aminopropyl morpholine and methyl isobutyl ketone; 3. Rreaction product of fatty acids, ethylene amine and methyl isobutyl ketone. Class II substances: 1. Reaction product of formaldehyde, 1,3-benzenedimethanamine, phenol, and methyl isobutyl ketone; 2. Reaction product of fatty acids, butoxymethyl oxirane, formaldehyde-phenol polymer glycidyl ether, aminopropyl morpholine, polyether amine, ethylene amine and methyl isobutyl ketone.
P–05–0193	01/30/08	01/04/08	(G) Polyester acrylate oligomer
P–06–0646	01/15/08	12/15/07	(G) Fatty acids, alkyl- unsatd., dimers, reaction products with bisphenol a-bisphenol a diglycidyl ether polymer and polyethylenepolyamines
P–07–0060	01/28/08	01/24/08	(G) Aliphatic acrylate
P–07–0095	01/08/08	12/27/07	(G) Substituted pyridone
P–07–0110	01/02/08	11/26/07	(G) Calixarene
P–07–0112	01/07/08	12/18/07	(G) Substituted catechol
P–07–0113	01/07/08	12/18/07	(G) Chloroalkyl substituted catechol
P–07–0116	01/07/08	12/17/07	(G) Alkyl glycidyl ether
P–07–0285	01/09/08	01/03/08	(G) Polyurethane derivative
P–07–0291	01/14/08	12/27/07	(G) Cobalt zinc complex derivative
P–07–0338	01/09/08	01/02/08	(G) Aliphatic polyurethane resin
P–07–0373	01/14/08	12/24/07	(G) Counterion of sulfonated CI pigment yellow 138
P–07–0386	01/30/08	01/21/08	(G) Heteropolycycle alkyl ether sulfate salt
P–07–0394	01/25/08	01/12/08	(G) Alkoxy siloxane
P–07–0423	01/09/08	12/20/07	(G) Acrylic polymer with styrene and polyethylene glycol methyl ether methacrylate
P–07–0453	01/28/08	01/11/08	(G) Halide salt of an alkylamine
P–07–0481	01/08/08	12/04/07	(G) Phosphonium, teraaryl-, tetrakis(aryl)borate(1-)
P–07–0508	01/09/08	12/17/07	(G) Ethene-vinyl acetate-acrylate-aldehyde modified polymer
P–07–0515	01/08/08	12/20/07	(G) Acrylic latex
P–07–0530	01/15/08	12/20/07	(G) Diol initiated polymer with fatty acids methyl esters hydroformylation products, hydrogenated
P–07–0571	01/30/08	12/25/07	(G) [[[[(methoxyphenyl)amino]carbonyl]-oxopropyl]diazenyl]-benzoic acid
P–07–0573	01/23/08	01/16/08	(S) D-glucopyranose, oligomeric, decyl octyl glycosides, 2-hydroxy-3-sulfopropyl ethers, sodium salts
P–07–0574	01/23/08	01/16/08	(S) D-glucopyranose, oligomeric, C_{10-16}-alkyl glycosides, 2-hydroxy-3-sulfopropyl ethers, sodium salts
P–07–0596	01/14/08	12/18/07	(S) A complex combination of alkanes produced from tallow by a hydrocracking process. It consists of alkanes having carbon numbers predominantly in the range of C_9 through C_{20} and boiling in the range of approximately 163 degrees celcius to 357 degrees celcius (325 degrees fahrenheit to 675 degrees fahrenheit) Distillates, hydrocracked tallow, 9–20.
P–07–0609	01/18/08	01/03/08	(G) Sulfurized fatty acid derivative
P–07–0640	01/28/08	01/17/08	(G) Isocyanate functional polyester polyether urethane polymer
P–07–0655	01/23/08	12/13/07	(G) Waterborne polyurethane
P–07–0695	01/11/08	12/23/07	(G) Sorbitan, alkanoate

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: February 25, 2008.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E8–4103 Filed 3–3–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8537–3]

Science Advisory Board Staff Office; Notification of Two Public Teleconferences of the Science Advisory Board Committee on Valuing the Protection of Ecological Systems and Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS) to discuss the Committee's draft report related to valuing the protection of ecological systems and services.

DATES: The SAB will conduct two public teleconferences. The public teleconferences will occur on March 26, 2008 and March 27, 2008. The call on March 26, 2008 will begin at 1 p.m. and end at 3 p.m. (eastern daylight time). The call on March 27, 2008 will begin

at 1 p.m. and end at 2 p.m. (eastern daylight time).

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the public teleconferences may contact Dr. Angela Nugent, Designated Federal Officer (DFO), via telephone at: (202) 343–9981 or e-mail at: *nugent.angela@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the EPA Web Site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: Background on the SAB C–VPESS and its charge was provided in 68 FR 11082 (March 7, 2003). The purpose of the teleconferences is for the SAB C–VPESS to discuss the Commitee's draft advisory report calling for expanded and integrated approach for valuing the protection of ecological systems and services. The discussion is related to the Committee's overall charge: to assess Agency needs and the state of the art and science of valuing protection of ecological systems and services and to identify key areas for improving knowledge, methodologies, practice, and research.

Availability of Meeting Materials: Agendas and materials in support of the teleconferences will be placed on the SAB Web Site at: *http://www.epa.gov/sab/* in advance of each teleconference.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during the public teleconferences. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public SAB teleconference will be limited to three minutes per speaker, with no more than a total of one-half hour for all speakers. To be placed on the public speaker list, interested parties should contact Dr. Angela Nugent, DFO, in writing (preferably via e-mail) five business days in advance of each teleconference. *Written Statements:* Written statements should be received in the SAB Staff Office five business days in advance of each teleconference above so that the information may be made available to the SAB for their consideration prior to each teleconference. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Angela Nugent at (202) 343–9981 or *nugent.angela@epa.gov*. To request accommodation of a disability, please contact Dr. Nugent preferably at least ten days prior to the teleconferences to give EPA as much time as possible to process your request.

Dated: February 27, 2008.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8–4139 Filed 3–3–08; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Friday, March 7, 2008 at 11 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: Local Cost Policy, OECD Rule Change.

PUBLIC PARTICIPATION: The meeting will be open to public participation for Item No. 1 only.

FOR FURTHER INFORMATION CONTACT: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Tele. No. 202–565–3957).

Howard A. Schweitzer,

General Counsel.

[FR Doc. 08–966 Filed 2–29–08; 3:43 pm]

BILLING CODE 6690–07–M

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Economic Inclusion (ComE–IN); Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Economic Inclusion, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations.

DATES: Wednesday, March 19, 2008, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will be focused on asset building. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting.

This ComE–IN meeting will be Webcast live via the Internet at: *http://www.vodium.com/goto/fdic/boardmeetings.asp.* This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html* (*http://www.vodium.com*). Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.macromedia.com/go/getflashplayer.* Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed internet connection is recommended. The ComE–IN meetings videos are made available on-demand approximately one week after the event.

Dated: February 28, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. E8–4084 Filed 3–3–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL TRADE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Trade Commission.

TIME AND DATE: 2 p.m., Tuesday, April 1, 2008.

PLACE: Federal Trade Commission Building, Room 532, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to Public: (1) Oral Argument in REALCOMP II, LTD., Docket 9320.

Portion Closed to the Public: (2) Executive Session to follow Oral Argument in REALCOMP II, LTD., Docket 9320.

Contact Person for More Information: Mitch Katz.

Office of Public Affairs: (202) 326–2180.

Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 08–955 Filed 2–29–08; 2:06 pm]

BILLING CODE 6750–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, Announces the Following Meeting

Name: ICD–9–CM Coordination and Maintenance Committee Meeting.

Time and Date: 8:30 a.m.–6 p.m., March 19, 2008. 8:30 a.m.–6 p.m., March 20, 2008.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

Status: Open to the public.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee will hold its first meeting of the 2008 calendar year cycle on Wednesday and Thursday, March 19–20, 2008. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth Revision, Clinical Modification.

Matters To Be Discussed: Tentative agenda items include:

Antidepressant poisonings
Gastroschisis and omphalocele
History of t–PA
Methicillin resistant staphylococcus aureus
Military-related external cause of injury codes and activity codes
Premature birth status
Venous complications in pregnancy and the puerperium
Venous thromboembolism
Addenda (diagnoses)
Bilateral ventricular assist devices
Collateral air flow assessment
Episiotomy and repair of spontaneous lacerations
Fenestrated endograft repair of infrarenal abdominal aortic aneurysms
Laparoscopic robotic assisted surgery
Spinal fusion robotic assisted surgery
Total breast reconstruction
Addenda (procedures)

Contact Person for Additional Information: Amy Blum, Medical Systems Specialist, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, e-mail *alb8@cdc.gov*, telephone 301–458–4106 (diagnosis), Mady Hue, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Blvd., Baltimore, Maryland 21244, e-mail *marilu.hue@cms.hhs.gov*, telephone 410–786–4510 (procedures).

Notice: Because of increased security requirements, CMS has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show an official form of picture I.D., (such as a driver's license), and sign in at the security desk upon entering the building.

Those who wish to attend a specific ICD–9–CM C&M meeting in the CMS auditorium must submit their name and organization for addition to the meeting visitor's list. Those wishing to attend the March 19–20, 2008 meeting must submit their name and organization by March 12, 2008 for inclusion on the visitor's list. This visitor's list will be maintained at the front desk of the CMS building and be used by the guards to admit visitors to the meeting. Those who attended previous ICD–9–CM C&M meetings will no longer be automatically added to the visitor's list. You must request inclusion of your name prior to each meeting you attend.

Register to attend the meeting on-line at: *http://www.cms.hhs.gov/apps/events/*.

Notice: This is a public meeting. However, because of fire code requirements, should the number of attendants meet the capacity of the room, the meeting will be closed.

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: February 25, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. E8–4095 Filed 3–3–08; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a New System of Records (SOR).

SUMMARY: In accordance with the Privacy Act of 1974, we are proposing to establish a new SOR titled, ''Medicaid Integrity Program System (MIPS),'' System No. 09–70–0599. With passage of the Deficit Reduction Act (DRA) of 2005, the Secretary of HHS was directed to establish a Medicaid Integrity Program (MIP) designed to provide CMS the resources necessary to combat fraud, waste and abuse in the Medicaid program. The DRA takes the partnership between CMS and the State Medicaid agencies to a new level. The MIP represents CMS' first national strategy to combat fraud and abuse in the 41-year history of the Medicaid program. MIP offers a unique opportunity to identify, recover and prevent inappropriate Medicaid payments. It will also support the efforts of State Medicaid agencies through a combination of oversight and technical assistance. Although individual States work to ensure the integrity of their respective Medicaid programs, MIP provides CMS with the ability to more directly ensure the accuracy of Medicaid payments and to deter those

who would exploit the program. It advances these goals which are shared by the States and the Federal government. The combined Federal and State resources for preventing fraud will be marshaled more effectively than ever.

The primary purpose of this system is to establish an accurate, current, and comprehensive database containing standardized enrollment, eligibility, and paid claims of Medicaid beneficiaries to assist in the detection of fraud, waste and abuse in the Medicare and Medicaid programs. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, consultant or a CMS grantee; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support a research or evaluation project; (4) support litigation involving the agency; and (5) combat fraud, waste, and abuse in a federally-funded health benefit program. We have provided background information about the new 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 routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

DATES: *Effective Dates:* CMS filed a new system report with the Chair of the House Committee on Oversight and Government Reform, 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 February 26, 2008. To ensure that all parties have adequate time in which to comment, the new 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: James Gorman, Director, Division of Medicaid Integrity Contracting, Program Integrity Group, Center for Medicaid and State Operations, CMS, Mail Stop B2–2923, 7111 Security Boulevard, Baltimore, Maryland 21244–1850. He can also be reached by telephone at 410–786–1417, or via e-mail at *james.gorman@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: With passage of the Deficit Reduction Act (DRA) of 2005 the Department of Health and Human Services was directed to establish a Medicaid Integrity Program (MIP) designed to provide CMS the resources necessary to combat fraud, waste and abuse in Medicaid. Section 6034 of the DRA requires that a comprehensive plan be developed every five years by a collective group including the Secretary of Health and Human Services (HHS), the United States Attorney General, the Director of the Federal Bureau of Investigation, the Comptroller General of the United States, the Inspector General of HHS, and state officials with responsibility for controlling provider fraud and abuse under Medicaid. The MIP planning group has broadly interpreted ''state officials'' to represent directors from State Medicaid programs, their program integrity units, and Medicaid Fraud Control Units. CMS' Center for Medicaid and State Operations (CMSO) is responsible for agency activities related to Medicaid and will be organizationally responsible for the administration of the MIP.

I. Description of the Proposed System of Records

A. Statutory and Regulatory Basis for SOR

Authority for maintenance of the system is given under § 6034 of the Deficient Reduction Act of 2005 Act (Pub. L. 109–171) (revising Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which establishes the Medicaid Integrity Program under which the Secretary shall provide CMS the resources necessary to combat fraud, waste and abuse in the Medicaid program.

B. Collection and Maintenance of Data in the System

MIPS contain information on Medicaid beneficiaries, and physicians and other providers involved in furnishing services to Medicaid beneficiaries. Information contained in this system includes, but is not limited to: assigned Medicaid identification number, name, address, social security number, health insurance claim number, date of birth, gender, ethnicity and race, medical services, equipment, and supplies for which Medicaid reimbursement is requested, and materials used to determine amount of benefits allowable under Medicaid. Information on physicians and other providers of services to the beneficiary consist of an assigned provider identification number, and information used to determine whether a sanction or suspension is warranted.

II. Agency Policies, Procedures, and Restrictions on Routine Uses

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 MIPS 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 MIPS. 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 establish an accurate, current, and comprehensive database containing standardized enrollment, eligibility, and paid claims of Medicaid beneficiaries to be used for the administration of Medicaid at the Federal level, produce statistical reports, support Medicaid related research, and assist in the detection of fraud and abuse in the Medicare and Medicaid programs.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

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 support 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 assist another Federal or state agency to:

a. Contribute to the accuracy of CMS' proper payment of Medicare/Medicaid benefits; and/or

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 MIPS information for the purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state.

CMS may require MIPS data to enable them to assist in the implementation and maintenance of the Medi-Medi program.

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with HHS for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Title IV, XVIII, XIX and XXI of the Act, and for the administration of the Medicaid program.

Data will be released to the state only on those individuals who are eligible enrollees, and beneficiaries under the services of a Medicaid program within the state or who are residents of that state.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require MIPS information for auditing state Medicaid eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this system of records.

3. To support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The MIPS data will provide for research or in support of evaluation projects, a broader, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

4. To support 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.

5. 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.

6. To assist another Federal agency or to assist 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 MIPS 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 who are familiar with the enrollees 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 Proposed System of Records on Individual Rights

CMS proposes to establish 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 (see item IV above) 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: February 25, 2008.

Charlene Frizzera,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0599

SYSTEM NAME:

''Medicaid Integrity Program System (MIPS),'' HHS/CMS/CMSO.

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 contractor sites and at CMS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

MIPS contain information on Medicaid beneficiaries, and physicians and other providers involved in furnishing services to Medicaid beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system includes, but is not limited to: Assigned Medicaid identification number, name, address, social security number (SSN), health insurance claim number (HICN), date of birth, gender, ethnicity and race, medical services, equipment, and supplies for which Medicaid reimbursement is requested, and materials used to determine amount of benefits allowable under Medicaid. Information on physicians and other providers of services to the beneficiary consist of an assigned provider identification number, and information used to determine whether a sanction or suspension is warranted.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under section 6034 of the Deficient Reduction Act of 2005 Act (Pub. L. 109–171) (revising Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.)) which establishes the Medicaid Integrity Program under which the Secretary shall provide CMS the resources necessary to combat fraud, waste and abuse in the Medicaid program.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this system is to establish an accurate, current, and comprehensive database containing standardized enrollment, eligibility, and paid claims of Medicaid beneficiaries to assist in the detection of fraud, waste and abuse in the Medicare and Medicaid programs. Information retrieved from this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, consultant or a CMS grantee; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support a research or evaluation project; (4) support litigation involving the agency; and (5) combat fraud, waste, and abuse

in a federally-funded health benefit program.

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 or state agency to:

a. Contribute to the accuracy of CMS' proper management of Medicare/Medicaid benefits; and/or

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 an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. 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.

5. To 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.

6. To 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 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 who are familiar with the enrollees 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 computer diskette and magnetic media.

RETRIEVABILITY:

Information can be retrieved by the assigned beneficiary identification number, SSN, HICN, and the assigned physician or other providers of services identification number.

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 MIPS data for a total period not to exceed 5 years after the final determination of the case is completed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Medicaid Integrity Contracting, Program Integrity Group, Center for Medicaid and State Operations, CMS, Mail Stop B2–2923, 7111 Security Boulevard, 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:

CMS obtains the identifying information contained in this system from state Medicaid agencies, or Medicaid Management Information Systems maintained by the individual states, and information contained on CMS Form 2082.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E8–4069 Filed 3–3–08; 8:45 am]

BILLING CODE 4120–03–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 requirements of the Privacy Act of 1974, we are proposing to modify or alter an existing system of records titled ''Links of Social Security Administration (SSA) and Health Care Financing Administration (HCFA) Data (LOD), System No. 09–70–0069, established at 65 **Federal Register** 50544 (August 18, 2000). The system name reflects the former name of the Agency—the Health Care Financing Administration. For this reason, we propose to change the name of the system to read: the ''Links of Social Security Administration (SSA) and the Centers for Medicare & Medicaid Services Data (LOD).'' 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. 09–70–0512.

We propose to modify existing routine use number 2 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separate from CMS contractors and/or consultants. The modified routine use will be renumbered as routine use number 1. We will delete routine use number 3 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. We propose to broaden the scope of the disclosure provisions of this system by adding a routine use to permit the release of information to another Federal and state agencies to: (1) Allow such agency to comply with Title XI, Part C of the Act; (2) enable such agency to administer a Federal health benefits program, and/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 (3) support data exchanges between the cooperating agencies. The new routine use will be numbered as routine use number 2.

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 whenever the system collects or maintains 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.

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 recent reorganization or because of 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 the LOD is to collect and maintain information that will be used to conduct research, perform policy analysis, and improve program management for populations served by both SSA and CMS. Information maintained in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor, consultant or grantee; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) facilitate research on the quality and effectiveness of care provided, as well as epidemiological projects; and (4) support litigation involving the Agency. We have provided background information about the new 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 proposed 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 *February 26, 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: Dave Baugh, Senior Technical Advisor, Research and Evaluation Group, Office of Research, Development and Information, CMS, Mail Stop Room C3–20–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. He can be reached by telephone at 410–786–7716, or via e-mail at *David.Baugh@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of the Modified or Altered System of Records

A. Statutory and Regulatory Basis for SOR

Authority for maintenance of this system is given under Section 1875(a) [42 U.S.C. 1395II(a)] and 1110 of the Social Security Act [42 U.S.C. 1310].

B. Collection and Maintenance of Data in the System

Information maintained in this system contains samples of the United States population served by programs administered by CMS and SSA. The system includes the following information for each: Name, social security number, Medicaid identification number, health insurance claim number, eligibility for SSA and CMS programs, and benefit record information.

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 LOD information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both individually identifiable and non-individually-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of LOD. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the 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 that will be used to conduct research, perform policy analysis, and improve program management for populations served by both SSA and CMS.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

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 or disclosure of the record;

b. Remove or destroy at the earliest time all individually-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 support Agency contractors, consultants, or grantees that have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need access to the records in order to assist CMS.

We contemplate disclosing 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, consultant, or grantee 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 assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Allow such agency to comply with Title XI, Part C of the Act,

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. Support data exchanges between the cooperating agencies.

In addition, other state agencies in their administration of a Federal health program may require LOD information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and /or the quality of health care services provided in the state.

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for administration of Titles IV, XVIII, and XIX of the Act, and for the administration of the Medicaid program.

3. To support an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability or the restoration or maintenance of health.

LOD data may be able to provide for research, evaluation, and epidemiological projects a broader longitudinal national perspective of the status of health care patients. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to patients and the policy that governs the care.

4. To assist 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, or occasionally when another party is involved in litigation and CMS's 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.

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, subparts A and E) 65 FR 82462 (12–28–00). 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.'' (See 45 CFR 164–512 (a)(1)).

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 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 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: February 25, 2008.

Charlene Frizzera,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0512

SYSTEM NAME:

''Links To Social Security Administration and Centers For Medicare & Medicaid Services Data (LOD),'' HHS/CMS/ORDI

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data

SYSTEM LOCATION:

Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various other locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system includes samples of the United States population served by Social Security Administration (SSA) and CMS programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The collected information will include, but is not limited to name, social security number (SSN), Medicaid identification number, health insurance claim number (HICN), eligibility for SSA and CMS programs, and benefit record information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of this system is given under Section 1875(a) [42 U.S.C. 1395II(a)] and 1110 of the Social Security Act [42 U.S.C. 1310].

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the LOD is to collect and maintain information that will be used to conduct research, perform policy analysis, and improve program management for populations served by both SSA and CMS. Information maintained in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor, consultant or grantee; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) facilitate research on the quality and effectiveness of care provided, as well as epidemiological projects; and (4) support litigation involving the Agency.

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, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Allow such agency to comply with Title XI, Part C of the Act,

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. Support data exchanges between the cooperating agencies.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease, disability, or quality care projects, the restoration or maintenance of health, and payment related projects.

4. 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.

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, Subparts A and E) 65 FR 82462 (12–28–00). 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.'' (See 45 CFR 164–512 (a) (1).)

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 electronic media.

RETRIEVABILITY:

The collected data are retrieved by an individual identifier; e.g., beneficiary name, health insurance claim number, State assigned personal identifier, or social security number.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against 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 information for a total period not to exceed 25 years. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Information and Methods Group, Office of Research, Development & Information, Mail Stop C3–16–07, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1849.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, employee identification number, tax identification number, national provider number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), HICN, and/or 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 reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record 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:

Sources of information contained in this records system include data collected from SSA systems of records, e.g., Supplemental Security Record (09–60–0103), Master Beneficiary Record (09–60–0090), Disability Determination Files (09–60–0044), and Social Security Account Number Identification File (09–60–0058) and LOD systems of records, e.g., Medicaid Statistical Information System (09–70–0541), Current Beneficiary Survey (09–70–0519), Common Working Files (09–70–0526), National Claims History Files (09–70–0558) and Enrollment Data Base (09–70–0502).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E8–4070 Filed 3–3–08; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Ohio State Plan Amendment (SPA) 07–014

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing to be held on April 4, 2008, at the CMS Chicago Regional Office, 233 N. Michigan Avenue, Suite 600, the Illinois Room, Chicago, IL 60601–5519, to reconsider CMS' decision to disapprove Ohio SPA 07–014.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by March 19, 2008.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS' decision to disapprove Ohio SPA 07–014, which was submitted on September 28, 2007, and disapproved on December 20, 2007.

Under this SPA, the State proposed to expand Medicaid eligibility by excluding all family income that is between 201 percent of the Federal poverty level (FPL) and 300 percent of the FPL in calculating income for purposes of determining eligibility. As a result, although the plan nominally provides for eligibility of optional targeted low-income children only for those with family income through 200 percent of the FPL, in effect, the eligibility level would rise to 300 percent of the FPL.

The amendment was disapproved because it indicated that the State will claim Federal matching funds at a rate other than the rate set forth in the Social Security Act (the Act), and thus, is not consistent with methods of administration necessary for proper and efficient operation of the plan, as required by section 1902(a)(4) of the Act.

At the hearing:

• The disapproval of this SPA will be discussed. The SPA was disapproved because the State declared its intent and was unwilling to change its intent to claim Federal matching funds at the regular matching rate, rather than the enhanced matching rate set forth in the Act, for the expanded population optional targeted low-income children, with income between 201 percent and 300 percent of the FPL.

• Section 1903(a)(1) of the Act requires that the Secretary pay the Federal medical assistance percentage (FMAP) of claimed State expenditures under the approved plan. The FMAP is defined at section 1905(b) of the Act. This section provides that the Federal matching rate for children described in section 1905(u)(2)(B) or (u)(3) of the Act ''is equal to the enhanced FMAP described in section 2105(b)'' of the Act, unless the State has exhausted its allotment under section 2104 of the Act, under the State Children's Health Insurance Program, or failed to comply with maintenance of effort and proper reporting requirements. Since none of those conditions appear to apply, and the expansion group is comprised of individuals who are described in section 1905(u)(2)(B) of the Act, the enhanced FMAP is the applicable FMAP rate, and claims at any other rate would not be consistent with proper and efficient administration of the State plan.

• The State's proposal was not consistent with methods of administration necessary for proper and efficient operation of the plan, as required by section 1902(a)(4) of the Act, because the State indicated in its overall submission that the State did not plan to submit claims at the statutorily indicated FMAP rate.

Section 1116 of the Act and Federal regulations at 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Ohio announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ara Mekhjian, Esq.,
Assistant Attorney General,
State of Ohio,
Health and Human Services Section,
30 E. Broad Street, 26th Floor,
Columbus, OH 43215–3400.

Dear Mr. Mekhjian:

I am responding to your request for reconsideration of the decision to disapprove the Ohio State plan amendment (SPA) 07–014, which was submitted on September 28, 2007, and disapproved on December 20, 2007.

Under this SPA, the State proposed to expand Medicaid eligibility by excluding all family income that is between 201 percent of the Federal poverty level (FPL) and 300 percent of the FPL in calculating income for purposes of determining eligibility. As a result, although the plan nominally provides for eligibility of optional targeted low-income children only for those with family income through 200 percent of the FPL, in effect, the eligibility level would rise to 300 percent of the FPL.

The amendment was disapproved because it indicated that the State will claim Federal matching funds at a rate other than the rate set forth in the Social Security Act (the Act), and thus, is not consistent with methods of administration necessary for proper and efficient operation of the plan, as required by section 1902(a)(4) of the Act.

At the hearing:

• The disapproval of this SPA will be discussed. The SPA was disapproved because the State declared its intent and was unwilling to change its intent to claim Federal matching funds at the regular matching rate, rather than the enhanced matching rate set forth in the Act, for the expanded population optional targeted low-income children, with income between 201 percent and 300 percent of the FPL.

• Section 1903(a)(1) of the Act requires that the Secretary pay the Federal medical assistance percentage (FMAP) of claimed State expenditures under the approved plan. The FMAP is defined at section 1905(b) of the Act. This section provides that the Federal matching rate for children described in section 1905(u)(2)(B) or (u)(3) of the Act ''is equal to the enhanced FMAP described in section 2105(b)'' of the Act, unless the State has exhausted its allotment under section 2104 of the Act, under the State Children's Health Insurance Program, or failed to comply with maintenance of effort and proper reporting requirements. Since none of those conditions appear to apply, and the expansion group is comprised of individuals who are described in section 1905(u)(2)(B) of the Act, the enhanced FMAP is the applicable FMAP rate, and claims at any other rate would not be consistent with proper and efficient administration of the State plan.

• The State's proposal was not consistent with methods of administration necessary for proper and efficient operation of the plan, as required by section 1902(a)(4) of the Act, because the State indicated in its overall

submission that the State did not plan to submit claims at the statutorily indicated FMAP rate.

I am scheduling a hearing at your request for reconsideration to be held on April 4, 2008, at the Centers for Medicare & Medicaid Services' Chicago Regional Office, 233 N. Michigan Avenue, Suite 600, the Illinois Room, Chicago, IL 60601–5519, to reconsider the decision to disapprove SPA 07–014. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR Part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–2055. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,

Kerry Weems,
Acting Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18).

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program.)

Dated: February 25, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8–4068 Filed 3–3–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0132]

Agency Information Collection Activities; Proposed Collection; Comment Request; State Petitions for Exemption From Preemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements contained in existing FDA regulations governing State petitions for exemption from preemption.

DATES: Submit written or electronic comments on the collection of information by May 5, 2008.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

State Petitions for Exemption From Preemption—21 CFR 100.1(d) (OMB Control No. 0910–0277) —Extension

Under section 403A(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343–1(b)), States may petition FDA for exemption from Federal preemption of State food labeling and standard of identity requirements. Section 100.1(d) (21 CFR 100.1(d)) sets forth the information a State is required to submit in such a petition. The information required under § 100.1(d) enables FDA to determine whether the State food labeling or standard of identity requirement satisfies the criteria of section 403A(b) of the act for granting exemption from Federal preemption.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
100.1(d)	1	1	1	40	40

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.1(d) is minimal because petitions for exemption from preemption are seldom submitted by States. In the last 3 years, FDA has not received any new petitions for exemption from preemption; therefore, the agency estimates that one or fewer petitions will be submitted annually. Although FDA has not received any new petitions for exemption from preemption in the last 3 years, it believes these information

collection provisions should be extended to provide for the potential future need of a State or local government to petition for an exemption from preemption under the provisions of section 403(A) of the act.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

Dated: February 26, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8–4066 Filed 3–3–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0129]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements for firms that process acidified foods and thermally processed low-acid foods in hermetically sealed containers.

DATES: Submit written or electronic comments on the collection of information by May 5, 2008.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers—21 CFR 108.25 and 108.35, and Parts 113 and 114 (OMB Control Number 0910–0037)—Extension

Under the Federal Food, Drug, and Cosmetic Act (the act), FDA is authorized to prevent the interstate distribution of food products that may be injurious to health or that are otherwise adulterated, as defined in section 402 of the act (21 U.S.C. 342). Under the authority granted to FDA by section 404 of the act (21 U.S.C. 344), FDA regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures and to permit FDA to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum*. The spores of *C. botulinum* must be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing procedures, which must include the use of adequate heat processes or other means of preservation.

To protect the public health, FDA regulations require that each firm that manufactures, processes, or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with FDA using Form FDA 2541 (§§ 108.25(c)(1) and 108.35(c)(2) (21 CFR 108.25(c)(1) and 108.35(c)(2))). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Form FDA 2541a for all methods except aseptic processing, or Form FDA 2541c for aseptic processing of low-acid foods in hermetically sealed containers (§§ 108.25(c)(2) and 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product, and operating processes and procedures must be posted near the processing equipment or made available to the operator (§ 113.87(a) (21 CFR 113.87(a))).

Regulations in parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms are also required to document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c)); to report any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms

where any lot of the food has entered distribution in commerce (§§ 108.25(d) and 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§§ 113.60(c) (thermally processed foods) and 114.80(b) (acidified foods)).

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Form FDA 2541 (Registration)	108.25 and 108.35	515	1	515	.17	88
Form FDA 2541a (Process Filing)	108.25 and 108.35	1,489	8.62	12,835	.333	4,274
Form FDA 2541c (Process Filing)	108.35	84	7.77	653	.75	490
Total						4,852

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Part	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
113 and 114	8,950	1	8,950	250	2,237,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based its estimate on registrations and process filings received over the past 3 years. The reporting burden for §§ 108.25(d) and 108.35(d) and (e) is minimal because notification of spoilage, process deviation or contamination of product in distribution occurs less than once a year. Most firms discover these problems before the product is distributed and, therefore, are not required to report the occurrence. To avoid double-counting, estimates for §§ 108.25(g) and 108.35(h) have not been included because they merely cross-reference recordkeeping requirements contained in parts 113 and 114.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

Dated: February 26, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8–4067 Filed 3–3–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Privacy Act of 1974; Revisions to OIG's Privacy Act System of Records: Criminal Investigative Files

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of proposed revisions to existing Privacy Act systems of records.

SUMMARY: The Office of Inspector General (OIG) proposes to revise and update the existing system of records, entitled ''Criminal Investigative Files'' (09–90–0003). This proposed notice is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. This system of records, maintained by OIG, was last revised and updated on December 8, 2006.

DATES: *Effective Date:* These revisions will become effective without further notice on April 18, 2008 unless comments received on or before that date result in a contrary determination.

Comment Date: Comments on these revisions will be considered if we receive them at the addresses provided below no later than 5 p.m. on April 3, 2008. Interested parties may submit written comments on this proposed revision to the addresses indicated below.

ADDRESSES: In commenting, please refer to file code OIG–793-PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at *http://www.regulations.gov*. (Attachments should be in Microsoft Word, if possible.)

2. *By regular, express, or overnight mail.* You may send written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–793–PN, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver, by hand or courier, your written comments before the close period to Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 358–3141.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Regulations Officer, Office of External Affairs, (202) 619–0089.

SUPPLEMENTARY INFORMATION: In accordance with the Inspector General Act of 1978, 5 U.S.C. App. 3, the Criminal Investigative Files system of records is maintained for the purpose of (1) conducting, documenting, and tracking investigations conducted by OIG or other investigative agencies regarding HHS programs and operations; (2) documenting the outcome of OIG reviews of allegations and complaints received concerning HHS programs and operations; (3) aiding in prosecutions brought against the subjects of OIG investigations; (4) maintaining a record of the activities that were the subject of investigations; (5) reporting the results of OIG investigations to other departmental components for their use in operating and evaluating their programs and the imposition of civil or administrative sanctions; and (6) acting as a repository and source for information necessary to fulfill the reporting requirements of 5 U.S.C. App. 3.

In accordance with the Privacy Act requirement, agencies are to publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. This system of records was last revised and updated on December 8, 2006 (71 FR 71180), by updating the ''Systems Location'' section of that document.

OIG has reviewed and is now proposing to revise the criminal investigative file system of records by (1) amending the ''Routine Uses of Records Maintained in the System'' section by adding a new paragraph o. to address the requirement for a routine use for the disclosure of information in the investigation of data breaches of Personally Identifiable Information, in accordance with Office of Management and Budget Memorandum M–07–16; and (2) amending the ''Policies and Practices for Storing, Retrieving, Reviewing, Retaining, and Disposing of Records in the Storage System'' portion of the system of records to update the discussion on access methods for the mainframe and the storage location of data so that it is consistent with current technology. OIG will accept and consider comments and feedback in response to only the specific revisions to the current system of records addressed in this notice.

This proposed change will not otherwise increase access to these records.

Dated: February 27, 2008.

Daniel R. Levinson,

Inspector General.

SYSTEM NAME:

Criminal Investigative Files of the Inspector General HHS/OS/OIG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Inspector General, HHS, Room 5409, Wilbur J. Cohen Bldg., 330 Independence Avenue, SW., Washington, DC 20201.

Region 1, Office of Investigations (OI), OIG, JFK Federal Building, Room 2475, Boston, Massachusetts 02203.

Region 2, OI, OIG, 26 Federal Plaza, Room 13–124, New York, New York 10278.

Region 3, OI, OIG, Public Ledger Bldg., 150 South Independence Mall West, Suite 326, Philadelphia, Pennsylvania 19106.

Region 4, OI, OIG, Atlanta Federal Office, 61 Forsyth Street, SW., Suite 5T18, Atlanta, Georgia 30303.

Region 5, OI, OIG, 233 North Michigan Avenue, Suite 1330, Chicago, Illinois 60601.

Region 6, OI, OIG, 1100 Commerce Street, Room 629, Dallas, Texas 75242.

Region 7, OI, OIG, 1201 Walnut, Suite 920, Kansas City, Missouri 64106.

Region 9, OI, OIG, 50 United Nations Plaza, Room 174, San Francisco, California 94102.

Los Angeles Region, OI, OIG, 600 West Santa Ana Blvd., Suite 1100, Santa Ana, California 92701.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals relevant to a criminal investigation, including but not limited to the subjects of an investigation, complainants, and key witnesses where necessary for future retrieval.

CATEGORIES OF RECORDS IN THE SYSTEM:

Criminal investigative files and extracts from that file consisting of computerized case management and tracking files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, 5 U.S.C. App. 3, authorizes Inspectors General to conduct, supervise, and coordinate investigations relating to the programs and operations of their respective agencies.

PURPOSE(S):

Pursuant to the Inspector General Act of 1978, 5 U.S.C. App. 3, this system is maintained for the purpose of conducting, documenting, and tracking investigations conducted by OIG or other investigative agencies regarding HHS programs and operations, documenting the outcome of OIG reviews of allegations and complaints received concerning HHS programs and operations, aiding in prosecutions brought against the subjects of OIG investigations, maintaining a record of the activities that were the subject of investigations, reporting the results of OIG investigations to other departmental components for their use in operating and evaluating their programs and the imposition of civil or administrative sanctions, and acting as a repository and source for information necessary to fulfill the reporting requirements of 5 U.S.C. App. 3.

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

a. Information from this system of records may be disclosed to any other Federal agency or any foreign, State, or local government agency responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation where that information is relevant to an enforcement proceeding, investigation, or prosecution within the agency's jurisdiction.

b. Information from this system of records may be disclosed to (1) The Department of Justice in connection with requests for legal advice and in connection with actual or potential criminal prosecutions or civil litigation pertaining to the Office of Inspector General, and (2) a Federal or State grand jury, a Federal or State court, administrative tribunal, opposing counsel, or witnesses in the course of civil or criminal proceedings pertaining to the Office of Inspector General.

c. Information in this system of records may be disclosed to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a license, grant or other benefit.

d. Information in this system of records may be disclosed to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

e. Relevant information may be disclosed from this system of records to the news media and general public where there exists a legitimate public interest, e.g., to provide information on events in the criminal process, such as indictments, and where necessary, for protection from imminent threat to life or property.

f. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service, or issue a subpoena to the department for records in this system or records, the department will make such records available.

g. When the department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system, relevant records will be disclosed to such contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

h. Disclosures may be made to organizations deemed qualified by the Secretary to carry out quality assessments.

i. Information from this system of records may be disclosed in the course of employee discipline of competence determination proceedings.

j. Disclosures may be made 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.

k. Information from this system of records may be disclosed to the Department of Justice, to a judicial or administrative tribunal, opposing counsel, and witnesses, in the course of proceedings involving HHS, an HHS employee (where the matter pertains to the employee's official duties), or the United States, or any agency thereof where the litigation is likely to affect HHS, or HHS is a party or has an interest in the litigation and the use of the information is relevant and necessary to the litigation.

l. Information of this system of records may be disclosed to a Federal, State or local agency maintaining pertinent records, if necessary, to obtain a record relevant to a department decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

m. Information from this system of records may be disclosed to third party contacts, including public and private organizations, in order to obtain information relevant and necessary to the investigation of potential violations in HHS programs and operations, or where disclosure would enable the OIG to identify violations in HHS programs or operations or otherwise assist the OIG in pursuing on-going investigations.

n. A record may be disclosed to any official charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations. This disclosure category includes members of the President's Council on Integrity and Efficiency and officials and administrative staff within their investigative chain of command, as well as authorized officials of the Department of Justice and the Federal Bureau of Investigation.

o. A record may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

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

The records, which take the form of index cards, investigative reports, microcomputer disks, drives and/or CDs, files and printed listings are maintained under secure conditions in limited access areas. Written documents and computer disks are maintained in secure rooms, in security type safes or in lock bar file cabinets with manipulation proof combination locks. Computer servers containing files are locked in controlled-access rooms. Laptops that may contain files are protected with whole-disk encryption.

RETRIEVABILITY:

Records are retrievable by manual or computer search of indices containing the name or Social Security number of the individual to whom the record applies. Records may be cross-referenced by case or complaint number.

SAFEGUARDS:

Records are maintained in a restricted area and accessed only by Department personnel. Access within OIG is strictly limited to authorized staff members. All employees are given instructions on the sensitivity of such files and the restrictions on disclosure. Access within HHS is strictly limited to the Secretary, Under-Secretary, and other officials and employees on a need-to-know basis. All files and printed materials are safeguarded in accordance with the provisions of the National Institute of Standards and Technology, OMB Memoranda, and HHS Information Security policies and guidelines.

RETENTION AND DISPOSAL:

Investigative files are retained for 10 years after completion of the investigation and/or action based thereon. Paper and computer indices are retained permanently. The records control schedule and disposal standards may be obtained by writing to the Systems Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Room 5250, Wilbur J. Cohen Building, Department of Health and Human Services, 330 Independence Avenue, SW., Washington, DC 20201.

NOTIFICATION PROCEDURES:

Exempt. However, consideration will be given requests addressed to the system manager. For general inquiries, it would be helpful if the request included date of birth and Social Security number, as well as the name of the individual.

RECORDS ACCESS PROCEDURE:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the system manager at the address specified above, and reasonably identify the record, specify the information to be contested, and the corrective action sought with supporting justification.

RECORD SOURCE CATEGORIES:

OIG collects information from a wide variety of sources, including information from the Department and other Federal, State, and local agencies, witnesses, complaints and other nongovernmental sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In accordance with subsection (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), the Secretary has exempted this system from the access, amendment, correction, and notification provisions of the Act, 5 U.S.C. 552a(c)(3), (d)(1)–(4), (e)(3), and (e)(4)(G) and (H).

[FR Doc. E8–4105 Filed 3–3–08; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 section 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 on Drug Abuse Special Emphasis Panel, Pathway to Independence Award.

Date: March 18, 2008.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852.

Contact Person: Jose F. Ruiz, PhD., Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, 6102 Executive Blvd., Rm. 213, MSC 8401, Bethesda, MD 20892, 301–451–3086, *ruizjf@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, International Collaborations for HIV and Drug Abuse.

Date: April 2, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Washington DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Nadine Rogers, PhD., Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–402–2105, *rogersn2@nida.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–924 Filed 3–3–08; 8:45 am]

BILLING CODE: 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Drug Abuse; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, International Substance Abuse Data Resource Center.

Date: March 11, 2008.

Time: 9:30 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call)

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439.

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. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–925 Filed 3–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Aging; 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 discussion 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 on Aging Special Emphasis Panel, Aging Veterans' Work and Health Status.

Date: April 8, 2008.

Time: 11 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Bethesda, MD 20770 (Telephone Conference Call)

Contact Person: Wilbur C. Hadden, PhD., Health Science Administrator, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, *haddenw@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Methods Preventing and Shielding Long Life II.

Date: April 10, 2008.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814 (Telephone Conference Call)

Contact Person: Bita Nakhai, PhD., Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Genes and Alzheimer Meeting II.

Date: April 15, 2008.

Time: 2:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814 (Telephone Conference Call)

Contact Person: Bita Nakhai, PhD., Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–926 Filed 3–3–08; 8:45am]

BILLING CODE 4140–01–M

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 G–884, request for the return of original document(s); OMB Control No. 1615–0100.

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 May 5, 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, 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 please make sure to add OMB Control Number 1615–0100 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 collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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 an existing information collection.

(2) Title of the Form/Collection: Request for the Return of Original Document(s).

(3) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: Form G–884. 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. The information provided will be used by the USCIS to determine whether a person is eligible to obtain original document(s) contained in an alien file.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 7,500 responses at 30 minutes (0.50) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,750 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/.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: February 27, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–4134 Filed 3–3–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: Form G–845, Document Verification Request, and Document Verification Request Supplement; OMB Control No. 1615–0101.

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 May 5, 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, 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 please make sure to add OMB Control Number 1615–0101 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form G–845 and Supplement. Should USCIS decide to revise the Form G–845 and Supplement it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form G–845 and Supplement.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate 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) 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: Document Verification Request and Document Verification Request Supplement.

(3) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: Forms G–845 and G–845 Supplement. 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 and Households. The information collection allow for the verification of immigration status of certain persons applying for benefits under certain entitlement programs.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 500,000 responses at 5 minutes (.083 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 41,500 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/*.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: February 28, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–4136 Filed 3–3–08; 8:45 am]

BILLING CODE 4410–10–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–824, Application for Action on an Approved Application or Petition; OMB Control No. 1615–0044.

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 proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 5, 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., 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, please add the OMB Control No. 1615–0044 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate 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) 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 an existing information collection.

(2) *Title of the Form/Collection:* Application for Action on an Approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–824. 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. The Form I–824 facilitates a request from a petitioner or applicant for further action on a previously approved petition or application, or it can be used by a U.S. citizen to notify the Department of State of his or her U.S. citizenship status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 43,772 responses at 25 minutes (.416 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 18,209 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/*.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: February 27, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–4137 Filed 3–3–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request; Lay Order Period—General Order Merchandise

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-day notice and request for comments; extension of existing collection of information: 1651–0079.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Lay Order Period—General Order Merchandise. This request for comment is being made pursuant to the Paperwork Reduction Act (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 5, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Information Services Group, *Attn.:* Tracey Denning, 1300 Pennsylvania

Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Lay Order Period—General Order Merchandise Cost Submissions.

OMB Number: 1651–0079.

Form Number: N/A.

Abstract: This collection is required to ensure that the operator of an arriving carrier, or transfer agent shall notify a bonded warehouse proprietor of the presence of merchandise that has remained at the place of arrival or unlading without entry beyond the time period provided for by regulation.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 390.

Estimated Number of Responses: 12,675.

Estimated Time per Respondent: 32.5 hours.

Estimated Total Annual Burden Hours: 12,675.

Dated: February 27, 2008.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. E8–4096 Filed 3–3–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request; Establishment of a Container Station

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of existing collection of information: 1651–0040.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Establishment of a Container Station. This request for comment is being made pursuant to the Paperwork Reduction (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 5, 2008, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs and Border Protection, Information Services Group, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Establishment of a Container Station.

OMB Number: 1651–0040.

Form Number: N/A

Abstract: This collection is an application to establish a container station for the vaning and devaning of cargo.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 205.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 615.

Dated: February 27, 2008.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. E8–4097 Filed 3–3–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request; Declaration for Unaccompanied Articles

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of existing collection of information: 1651–0030.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to

comment on an information collection requirement concerning the Declaration for Unaccompanied Articles. This request for comment is being made pursuant to the Paperwork Reduction Act (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 5, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Information Services Group, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Declaration for Unaccompanied Articles.

OMB Number: 1651–0030.

Form Number: CBP Form–255.

Abstract: This collection is completed by each arriving passenger for each parcel or container which is being sent from an Insular Possession at a late date. This declaration allows that traveler to claim their appropriate allowable exemption.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 7,500.

Estimated Number of Responses: 15,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 1,250.

Dated: February 27, 2008.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. E8–4098 Filed 3–3–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request; Notice of Detention

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of existing collection of information: 1651–0073.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Notice of Detention. This request for comment is being made pursuant to the Paperwork Reduction Act (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 5, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Information Services Group, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Notice of Detention.

OMB Number: 1651–0073.

Form Number: N/A.

Abstract: CBP is empowered to detain merchandise when a violation of the laws relating to the admissibility of merchandise is suspected and issue a Notice of Detention to the responsible party. Any recipient of a Notice of Detention may respond by providing more information to CBP in order to facilitate the determination regarding admissibility of the merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 1,350.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 2,700.

Dated: February 27, 2008.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. E8–4100 Filed 3–3–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request; Bonded Warehouse Regulations

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of existing collection of information: 1651–0041.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Bonded Warehouse Regulations. This request for comment is being made pursuant to the Paperwork Reduction Act (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 5, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Information Services Group, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Bonded Warehouse Regulations.

OMB Number: 1651–0041.

Form Number: N/A.

Abstract: 19 CFR Part 19 sets forth requirements for bonded warehouses. This includes applications needed to establish a bonded warehouse; to receive free materials for the warehouse; and to make alterations, suspensions, relocation or discontinuance of a bonded warehouse.

Current Actions: This submission is being submitted to extend the expiration date, without change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 198.

Estimated Total Annual Responses: 9,254.

Estimated Time per Response: 32 minutes.

Estimated Total Annual Burden Hours: 4,910.

Dated: February 27, 2008.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. E8–4109 Filed 3–3–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request; Application To Pay Off or Discharge Alien Crewman (Form I–408)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of existing collection of information: 1651–0106.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burdens, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application To Pay Off or Discharge Alien Crewman (Form I–408). This request for comment is being made pursuant to the Paperwork Reduction Act (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 5, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. 202–344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application To Pay Off or Discharge Alien Crewman.

OMB Number: 1651–0106.

Form Number: I–408.

Abstract: This form is used by owner, agent, consignee, master or commanding of any vessel or aircraft to obtain permission from CBP to pay off or discharge any alien crewman.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 85,000.

Estimated Time per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 35,360.

Dated: February 27, 2008.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. E8–4110 Filed 3–3–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–06]

Housing Counseling Program—Biennial Agency Performance Review

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD-approved agencies are non-profit and government organizations that provide housing services. The information collected allows HUD to monitor and provide oversight for agencies approved to participate in the Housing Counseling Program. Specifically, the information collected is used to ensure that participating agencies comply with program policies and regulations and to determine if agencies remain eligible to maintain an approval status. Housing counseling aids tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership.

DATES: *Comments Due Date:* April 3, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Housing Counseling Program—Biennial Agency Performance Review.

OMB Approval Number: 2502–NEW.

Form Numbers: HUD–9910.

Description of the Need for the Information and Its Proposed Use: HUD-approved agencies are non-profit and government organizations that provide housing services. The information collected allows HUD to monitor and provide oversight for agencies approved to participate in the Housing Counseling Program. Specifically, the information collected is used to ensure that participating agencies comply with program policies and regulations and to determine if agencies remain eligible to maintain an approval status. Housing counseling aids tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership.

Frequency of Submission: Biennially.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	583	1		2.49		1,457

Total Estimated Burden Hours: 1,457.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 26, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–4062 Filed 3–3–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–07]

Application for Healthy Homes and Lead Hazard Control Grant Programs and Quality Assurance Plans

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is required in conjunction with the issuance of Notice of Funding Availability for Healthy Homes and Lead Hazard Control Programs that are authorized under Title X of the Housing and Community Development Act of 1992, Public Law 102–550, Section 1011, and other legislation. The quality Assurance Plan is obtained after the award of grants.

DATES: *Comments Due Date: April 3, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2539–0015) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410;

e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Application for Healthy Homes and Lead Hazard Control Grant Programs and Quality Assurance Plans.

OMB Approval Number: 2539–0015.

Form Numbers: SF–424, SF–424-Suppl., HUD–424–CBW, 27061, 27300, 2880, 2990, 2991, 2993, 2994, 96008, 96010, 96011, 96012, 96013, 96014, 96015, SF–LLL.

Description of the Need for the Information and Its Proposed Use: This information collection is required in conjunction with the issuance of Notice of Funding Availability for Healthy Homes and Lead Hazard Control Programs that are authorized under Title X of the Housing and Community Development Act of 1992, Public Law 102–550, Section 1011, and other legislation. The quality Assurance Plan is obtained after the award of grants.

Frequency of Submission: On occasion, Other One time.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	250	1.32	....	65.93	....	21,760

Total Estimated Burden Hours: 21,760.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 26, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–4057 Filed 3–3–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Comprehensive Conservation Plan for Arrowwood National Wildlife Refuge, ND

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce that our Final Comprehensive Conservation Plan (Plan) and finding of no significant impact (FONSI) for Arrowwood national wildlife refuge (Refuge) is available. This Final Plan describes how the Service intends to manage the refuge for the next 15 years.

ADDRESSES: A copy of the Plan may be obtained by writing to U.S. Fish and Wildlife Service, Division of Refuge Planning, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225; or by download from *http://mountain-prairie.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Michael Spratt, 303–236–4366 (phone); 303–236–4792 (fax); or *Michael_Spratt@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: President Franklin D. Roosevelt signed Executive Order 7168 on September 4, 1935, ''establishing Arrowwood Migratory Waterfowl Refuge.'' Now known as Arrowwood National Wildlife Refuge, the 15,973-acre Refuge is in east-central North Dakota. The Refuge covers 14 miles of the James River Valley in Foster and Stutsman counties, approximately 30 miles north of Jamestown. The purposes of the Refuge are for use by migratory birds with emphasis on waterfowl and other water birds; the conservation of fish and wildlife resources; use as an inviolate sanctuary; or for any other management purposes, for migratory birds; and a Refuge and breeding ground for migratory birds and other wildlife.

The Refuge lies on the Central Flyway migratory corridor and is an important stopover for many birds. The prairie grassland and wetland complex habitats provide nesting and feeding habitat for waterfowl in the spring and summer. Hundreds of thousands of waterfowl migrate through the area and use the wetlands in the spring and fall for feeding and resting. The Refuge contains approximately 6,000 acres of native prairie; 5,340 acres of seed grasses; 3,850 acres of wetlands; 660 acres of wooded ravines and riparian woodlands; and 125 acres of planted trees including shelterbelts. It is important to note that 3,430 acres of wetlands are managed impoundments and pools. Public use and recreation at the Refuge includes the six priority wildlife-dependent uses: Hunting, fishing, wildlife observation, wildlife photography, interpretation, and environmental education.

The draft Plan and environmental assessment (EA) was made available to the public for review and comment following the announcement in the **Federal Register** on March 22, 2007 (72 FR 13508–13509). The draft Plan and EA identified and evaluated three alternatives for managing the Refuge for the next 15 years. Under Alternative A, the No Action alternative, the Service would manage habitats, wildlife, programs, and facilities at current levels as time, staff, and funds allow. There would be an emphasis on waterfowl migration and reproduction habitat. The Service would not develop any new management, restoration, or education programs at the Refuge. Target elevations of each wetland impoundment would be managed independently to achieve optimal habitat conditions.

Alternative B would maximize the biological potential of the Refuge for both wetland and upland habitats, and support a well-balanced and diverse flora and fauna representative of the Prairie Pothole Region. A scientific-based monitoring program would be developed as part of the habitat management plan (HMP). Public use opportunities would be expanded with the construction of additional facilities

and development of educational programs.

Alternative C, the Proposed Action, would include those features described in Alternative B, as well as including a plan to improve the water quality entering the Refuge, and reducing peak flows in the upper James River watershed during spring runoff and summer rainfall events. This watershed management component would include working with private landowners through the U.S. Fish and Wildlife Service's Partners for Fish and Wildlife program and other federal, state, and private conservation programs. The focus would be to protect and restore wetlands and grasslands, and reduce the impact on water quality from cropland and livestock operations. Improving the health of the upper James River watershed would not only benefit wildlife habitat in the watershed and at the Refuge, it would also benefit the Jamestown Reservoir and all downstream users.

The Service is furnishing this notice to advise other agencies and the public of the availability of the final Plan, to provide information on the desired conditions for the refuges, and to detail how the Service will implement management strategies. Based on the review and evaluation of the information contained in the EA, the Regional Director has determined that implementation of the Final Plan does not constitute a major federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act. Therefore, an Environmental Impact Statement will not be prepared.

Dated: February 26, 2008.

Gary G. Mowad,

Acting Regional Director.

[FR Doc. E8–4087 Filed 3–3–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal—State Class III Gaming Amendment.

SUMMARY: This notice publishes an approval of Amendment II of the Amended and Restated Class III Gaming Compact between the Confederated Tribes of the Umatilla Indian Reservation and the State of Oregon.

DATES: *Effective Date:* March 4, 2008.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal—State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment revises the video lottery terminal definition, removes some check cashing restrictions, and addresses the proposed new Oregon State Police billing plan.

Dated: February 25, 2008.

Carl J. Artman,

Assistant Secretary, Indian Affairs.

[FR Doc. E8–4059 Filed 3–3–08; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare the Caliente Resource Management Plan and Environmental Impact Statement for the Bakersfield Field Office, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: The Bureau of Land Management's (BLM's) Bakersfield Field Office intends to revise the Resource Management Plan (RMP) for public lands and mineral estate within the Bakersfield Field Office, and prepare an associated Environmental Impact Statement (EIS). The RMP revision will update the existing Caliente Resource Management Plan. This notice initiates the public scoping process and provides information regarding public scoping meetings.

DATES: The public scoping process is initiated upon the date of publication of this notice. Formal scoping will end 60 days after publication of this notice; however, collaboration with the public will continue throughout the planning process. The BLM will hold public scoping meetings to identify relevant issues, and will announce these meetings at least 15 days in advance of the meetings through local news media, newsletters, and the BLM Web site: *http://www.blm.gov/ca/st/en/fo/bakersfield.html*. Formal opportunities for public participation will also be provided upon publication of the Draft RMP/EIS.

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

- Web Site: *http://www.blm.gov/ca/st/en/fo/bakersfield.html*.
- E-mail: *cacalrmp@ca.blm.gov*.
- Fax: (661) 391–6041.
- Mail: Caliente RMP, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308.

Documents pertinent to this proposal may be examined at the Bakersfield Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Steve Larson: Telephone (661) 391–6022; e-mail *cacalrmp@ca.blm.gov*.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM office in Bakersfield, California, intends to revise an RMP and prepare an associated EIS for the BLM managed public lands and interests within the Bakersfield Field Office—exclusive of the California Coastal National Monument and the Carrizo Plain National Monument. This document also announces public scoping meetings.

The planning area is located in Fresno, Kern, Kings, Madera, San Luis Obispo, Santa Barbara, Tulare, and Ventura Counties in California. This planning area encompasses approximately 400,000 acres of public land and an additional 450,000 acres of federal mineral estate. 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 EIS 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, email 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, 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: Oil & gas leasing and development; management of threatened & endangered plant and animal species; land tenure adjustment; and recreation management.

After public scoping comments are gathered, issues that are identified 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 issues are placed in categories 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 have been identified as:

1. The plan will establish new guidance and identify existing guidance upon which the BLM will rely in managing public lands within the Bakersfield Field Office.

2. The plan will be completed in compliance with the Federal Land Policy and Management Act (FLPMA) and all other applicable laws.

3. The planning process will include an environmental impact statement that will comply with the National Environmental Policy Act (NEPA) standards.

4. The RMP/EIS will incorporate by reference the *Standards for Rangeland Health and Guidelines for Livestock Grazing Management.*

5. The RMP/EIS will incorporate by reference all prior wilderness designations and wilderness study area findings that affect public lands in the planning area.

6. The plan will provide determinations as required by special program and resource specific guidance detailed in Appendix C of the BLM's Planning Handbook.

7. Decisions in the plan will strive to be compatible with the existing plans and policies of adjacent local, State, Tribal, and Federal agencies as long as the decisions are in conformance with Bureau policies on management of public lands.

8. The scope of analysis will be consistent with the level of analysis in approved plans and in accordance with Bureau-wide standards and program guidance.

9. Resource allocations must be reasonable and achievable within available technological and budgetary constraints.

10. The lifestyles and concerns of area residents will be recognized in the plan.

11. All lands within the California Coastal National Monument and the Carrizo Plain National Monument—both of which will be covered under separate resource management plans—will be dropped from the revised Caliente Resource Management Plan.

12. Decisions and management actions within the existing plan will be evaluated; those that are determined to still be valid will be carried forward into this revised RMP.

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: Outdoor recreation, archaeology, wildlife biology, botany, rangeland management, oil & gas, geology, realty, and fire management.

Dated: January 29, 2008.

Timothy Z. Smith,

Bakersfield Field Office Manager.

[FR Doc. E8–4071 Filed 3–3–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–330–07–1232–EB–AZ07]

Notice of Proposed Supplementary Rules on Public Lands Managed by the Lake Havasu Field Office, Arizona and California With Request for Comment

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Supplementary Rules for the Lake Havasu Field Office.

SUMMARY: The BLM Lake Havasu Field Office is proposing supplementary rules to implement decisions of the Lake Havasu Field Office Resource Management Plan (2007), to protect valuable and fragile natural and cultural resources, and to provide for public safety and enjoyment.

DATES: We invite public comments until May 5, 2008.

ADDRESSES: Mail or hand deliver all comments concerning the proposed supplementary rules to the Bureau of Land Management, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406. E-mailed comments may be sent to *Lake_Havasu@blm.gov*; or you may access the Federal eRulemaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mike Henderson, Assistant Field Manager, or Michael Dodson, Field Staff Law Enforcement Ranger, Bureau of Land Management, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406; telephone 928–505–1200.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedure

Written comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the rule that the comment is addressing. BLM need not consider: (a) comments that BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or (b) comments delivered to an address other than those listed above (see **ADDRESSES**). You may also access and comment on the proposed supplementary rules at the

Federal eRulemaking Portal by following the instructions at that site (see **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

II. Background

The following supplementary rules are created to implement the Lake Havasu Resource Management Plan on public lands within the planning area, and for continued management of these specific areas: Lake Havasu Shoreline, Parker Strip Recreation Management Area, Craggy Wash, and Swansea Townsite.

The Lake Havasu Field Office Resource Management Plan covers 1.3 million acres of public lands in Arizona and California, adjacent to the Colorado River in the counties of Mohave, Maricopa, and La Paz (Arizona), and San Bernardino (California).

Authority for the designation of fee sites is the Federal Lands Recreation Enhancement Act (FLREA) in (16 U.S.C. 6801–6814), which authorizes the BLM to charge fees at recreation sites through December 8, 2014. It provides for different kinds of fees, criteria for charging fees, public participation in determining fees, and the establishment of one interagency recreation pass. The BLM can use the revenues collected without further appropriation, and most of the funds are used for improvements at the recreation fee sites.

The proposed supplementary rules for the Lake Havasu Resource Management Plan are part of the management of the BLM Lake Havasu Shoreline Program, initiated in 1997 for the management of shoreline recreation and riparian resources. The area includes the shoreline and boat-in sites as Federal recreation fee sites. The sites were developed as designated fee sites by Arizona State Parks while the lands were under a lease administered by the BLM. The lease was voluntarily terminated, leaving the sites to return to the jurisdiction of the BLM.

The primary purpose of the Lake Havasu Shoreline Program is to provide areas for boating, camping, and day use. The recreation sites, designated as camps or day use sites, are in areas traditionally used by boat camping visitors. Arizona State Parks selected designated sites using criteria based on visitor use patterns, availability of shoreline access, and a need to establish sanitation facilities along heavily used shoreline areas. This program was established to accommodate the increasing demand for shoreline recreational sites, and to improve management of the natural resources. The designation of fee sites assures that specific locations are available for such use year after year.

The Parker Strip Recreation Management Area experiences high visitor use and contains campgrounds, day use areas, off-highway vehicle use areas, boat ramps, picnic areas, concession operated resorts, and the Parker Dam Road National Backcountry Byway.

The Craggy Wash area, located directly adjacent to the north side of the Lake Havasu City Municipal Airport and east of State Route 95, is heavily used for dispersed camping during the cooler months of the year (October to April). The area is also frequented by target shooters, off-highway vehicles, sightseers, bicyclists, and hikers. Frequently, as many as 300 visitors may be in the area at one time.

These supplementary rules replace existing rules for the Lake Havasu Shoreline, Aubrey Hills area, Craggy Wash area, Standard Wash area, Desert Bighorn Sheep Lambing Grounds (in Lake Havasu City, AZ), the Parker Strip Recreation Area (adjacent to the Colorado River in AZ and CA), and the Swansea Townsite (in La Paz County, AZ). Existing supplementary rules were published in the **Federal Register** on September 15, 2003 (68 FR 54004–54007).

III. Discussion of Supplementary Rules

The BLM has developed these proposed supplementary rules to manage continued multiple use of public lands. Under the authority of 43 U.S.C. 1733(a) and 43 CFR 8365.1–6, the BLM establishes the following supplementary rules for public lands administered under the Lake Havasu Field Office Resource Management Plan.

These proposed supplementary rules replace previous rules published in the **Federal Register** on September 15, 2003 (68 FR 54004) and May 21, 1998 (63 FR 27995). The proposed supplementary rules for the Lake Havasu Shoreline Area apply to the BLM-managed lands within 1,000 linear feet of the high water mark (450-foot elevation line) of Lake Havasu, located in Mohave and La Paz Counties in Arizona, and in San Bernardino County, California. These rules also apply to portions of Lake Havasu located within 500 linear feet of designated campsites, day use sites, fishing docks, boat docks, and swimming beaches. Included in this area are the following currently designated camps (listed by their location along the lake's Arizona shoreline from north to south):

Bluebird

Wren Cove (2 sites).
Mallard Cove (6 sites).
Teal Point (2 sites).
Widgeon Key.
Road Runner (2 sites).
Solitude Cove.
Balance Rock Cove.
Friendly Island (4 sites).
Goose Bay (2 sites).
Pilot Rock (3 sites).
Steamboat Cove (4 sites).
Buzzard Cove.
Eagle Cove.
Eagle Point.
Ewe Camp.
Rachel's Camp.
Linda's Camp.
Sand Isle (3 sites).
Standard Wash (3 sites).
Echo Cove (3 sites).
Coyote Cove (2 sites).
BLM Camp (2 sites).
Whyte's Retreat (2 sites).
Rocky Landing (3 sites).
Satellite Cove (3 sites).
Hum Hum Cove (2 sites).
Cove of the Little Foxes.
Disneyland (3 sites).
Gnat Keys (2 sites).
Hi Isle (10 sites).
Big Horn (2 sites).
Bass Bay (2 sites).
Larned Landing (3 sites).
Bill Williams (5 sites).

The proposed supplementary rules for the Parker Strip Recreation Management Area replace supplementary rules for the Parker Strip Recreation Area published on September 15, 2003 (68 FR 54004), and October 12, 1995 (60 FR 53194), and the supplementary rules for the Empire Landing and Crossroads Campgrounds, which are situated within the Parker Strip Recreation Management Area, published May 18, 1998 (63 FR 27316). These proposed supplementary rules apply to the Parker Strip Recreation Management Area, which is defined as:

Gila and Salt River Meridian, Arizona

T11N, R18W,

Sec. 15, 16, 22, 28, and 34.
T10N, R18W,
Sec. 5 (W1/2, NW1/4, SW1/4),
Sec. 6,
Sec. 7, Lots 1–4, (NE1/4, N1/2, SE1/4, SW1/4, SE1/4)
Sec. 18 (Lot 1, NW1/4, NE1/4).
T10N, R19W,
Sec. 12,
Sec. 13 (N1/2, N1/2, N1/2, SW1/4, NE1/4, NW1/4, SE1/4, NE1/4, N1/2, SE1/4, NW1/4, SW1/4, NW1/4, W1/2, SW1/4),
Sec. 14, 22 and 23,
Section 24 (W1/2, NW1/4).

San Bernardino Meridian, California

T2N, R27E, all.
T2N, R26E,
Sec. 1, 11–15, 21–27 and 34–36.
T1N, R26E,
Sec. 2, 3, 10, and 11.

The proposed rules for the Craggy Wash area replace supplementary rules for Craggy Wash published September 15, 2003 (68 FR 54004). The proposed supplementary rules for dispersed camping in the Craggy Wash area are necessary to manage the high volume of visitation to the area during the fall, winter, and spring seasons. The Craggy Wash area is defined as public lands located with the following legal description:

Gila and Salt River Meridian, Arizona

T14N, R20W,
Sec. 4 (N1/2),
Sec. 3 (N1/2),
Sec. 2 (N1/2).
T15N, R20W,
Sec. 33, 34, 35, 36.

The proposed supplementary rules for Swansea Townsite replace previously published rules. The Swansea Townsite area is defined as public lands located with the following legal description:

Gila and Salt River Meridian, Arizona

T10 N, R15W,
Sec. 28, W1/2 SW1/4;
Sec. 29, S1/2;
Sec. 32, N1/2;
Sec. 33, W1/2 NW1/4.

IV. Procedural Matters

The principal author of these supplementary rules is Michael Dodson, Field Staff Law Enforcement Ranger, BLM Lake Havasu Field Office.

Regulatory Planning and Review (Executive Order (EO) 12866)

These supplementary rules are not significant and are not subject to review by the Office of Management and Budget under EO 12866.

(1) These supplementary rules will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) These supplementary rules do not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) These supplementary rules do not raise novel legal or policy issues.

The supplementary rules will not affect legal commercial activity but merely contain rules of conduct for public use of a limited selection of public lands.

Regulatory Flexibility Act

The Department of the Interior certifies that these supplementary rules will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The supplementary rules will not affect legal commercial activity but will govern conduct for public use of a limited selection of public lands.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. These supplementary rules:

(1) Do not have an annual effect on the economy of $100 million or more. (See the discussion under Regulatory Planning and Review, above.)

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. (See the discussion above under Regulatory Flexibility Act, above.)

(3) Do not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The supplementary rules do not have a significant or unique effect on State, local, or tribal governments or the private sector. The supplementary rules have no effect on governmental or tribal entities. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (EO 12630)

In accordance with EO 12630, the supplementary rules do not have significant takings implications. The enforcement provision in the supplementary rules does not include any language requiring or authorizing forfeiture of personal property or any property rights. Executive Order 12630 addresses concerns based on the Fifth Amendment dealing with private property taken for public use without compensation. The land covered by the supplementary rules is public land managed by the BLM; therefore, no private property is affected. A takings implications assessment is not required.

Federalism (EO 13132)

In accordance with EO 13132, the BLM finds that the supplementary rules do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The supplementary rules do 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. The supplementary rules do not preempt state law.

Civil Justice Reform (EO 12988)

In accordance with EO 12988, we have determined that these supplementary rules do not unduly burden the judicial system and meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Consultation and Coordination With Indian Tribal Governments (EO 13175)

In accordance with EO 13175, we have found that this final rule would not include policies that have tribal implications. The supplementary rules would not affect lands held for the benefit of Indians, Aleuts, or Eskimos.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

The NEPA analysis for the decisions outlined in the Supplementary Rules was presented in the Draft (BLM, 2005) and Final Environmental Impact Statements (BLM, 2006). The decisions were approved in the Record of Decision (ROD) and Resource Management Plan (RMP) on May 10, 2007. The proposed supplementary rules allow Law Enforcement Rangers to implement the RMP decisions. These supplementary rules do not constitute a

major Federal action significantly affecting the quality of the human environment.

Under the authority of 43 U.S.C. 1733(a) and 43 CFR 8365.1–6, the BLM proposes to establish the following supplementary rules.

Supplementary Rules for All Public Lands Administered Under the Lake Havasu Field Office Resource Management Plan (2007)

1. Collection of dead and down wood is allowed only within 100 feet of a dispersed campsite and only for use in campfires as defined in 43 CFR 9212.0–5(e). The amount of firewood collected may not exceed the amount reasonably necessary to enjoy a traditional campfire. Destruction, gathering or vandalism of live vegetation is prohibited. On-site collection or ignition of any other form of wood, such as building materials, artifacts, picnic tables, signs, or facilities from public lands is strictly prohibited. The use of commercially available firewood from off-site sources is recommended and strongly encouraged. Bonfires or other fire that exceeds a campfire as defined in 43 CFR 9212.0–5(e) are prohibited. Any person responsible for a campfire must possess on-site at least one means of rapidly extinguishing the fire, which may include but is not limited to shovel, fire blanket, at least five gallons of water, or a proper fire extinguisher. Leaving an active campfire unattended is prohibited (43 CFR 9212.1(d)).

2. All activities involving the use of paintballs are prohibited in any wilderness area, any wilderness study area, and any area of critical environmental concern, or within one-quarter mile of any established facilities, sites, campgrounds, residences, trailheads, staging areas, roads or other special designations. This also applies to any other area posted as prohibiting paintball activities, and is in effect even if commercially available and marketed biodegradable paintball materials are being used. The use of any type of paintball materials is prohibited in these areas. In authorized areas, paintball materials must be commercially manufactured and biodegradable.

3. In the Standard Wash Off-Highway Vehicle Use Area (Open Area pending), and the Shea Road/Osborn Wash Off-Highway Vehicle Use Area (Open Area pending), all motorized vehicle use and access shall be managed to restrict such use to existing roads and trails, until such time that appropriate environmental clearances are obtained. No person shall engage in motorized travel off existing routes (such as off-highway vehicle free-play or cross-country travel) until such time as these areas are authorized opened for that use. Upon full environmental clearance of both Off-Highway Vehicle Use Areas and re-designation as Open Areas, this Supplementary Rule shall become null and void. However, each Open Area may obtain clearance and be opened for such use independently of each other and at different times.

4. Dispersed camping in undeveloped areas is authorized without permit for up to 14 days within any 28-day period. After the 14th day, campers must move beyond a 25-mile radius of their previous camp. This does not apply to concessions, public agency leases, and Long-Term Visitor Areas.

5. Overnight camping at the Lake Havasu Shoreline sites, Swansea Townsite, Beale Slough, and the Three Rivers Riparian District is limited to those recreation sites specifically designated for this use. Overnight camping at a site that is not specifically designated or assigned for such use is prohibited.

Supplementary Rules for the Lake Havasu Shoreline Area

1. You must pay a fee in order to use a designated recreation site, including occupying a site for any use exceeding 20 minutes.

2. You must not moor any watercraft or floating platform at a recreation site, or offshore in the vicinity or cove of any such site for more than 20 minutes without paying the required amenity fee. The fees will be in accordance with the fee schedule, requirements, and procedures that the BLM established under the Federal Lands Recreation Enhancement Act, and are payable in U.S. funds only.

3. You must present the appropriate fee receipt upon demand to any authorized BLM official inspecting the site. The fee receipt must be visibly displayed on the fee tube, in accordance with posted instructions, or in the manner directed by a BLM official.

4. You must not reassign or transfer your fee receipt to another individual or group, or to another campsite.

5. Any authorized BLM official may revoke your use privileges, without reimbursement, if you violate any BLM rule or regulation. If the BLM revokes your use privileges, you must remove all personal property and leave the recreation site within one hour of notice.

6. A recreation site is considered occupied after you have paid the appropriate amenity fee, have taken possession of the site by placing personal property at the site, and have displayed the fee receipt on the fee tube in accordance with written instructions or as directed by a BLM official. You must not occupy a site in violation of instructions from a BLM official, or when there is reason to believe that the site is occupied by another person or persons.

7. Except for authorized Federal, State, or local personnel during the commission of their duties, a site cannot be occupied by other visitors without the consent of the party that paid the amenity use fee.

8. You must not occupy a site designated as ''day use'' between sunset and sunrise.

9. A single vessel and its occupants may not occupy more than one site.

10. During the hours of 10 p.m. to 6 a.m., in accordance with applicable state time zone standards, you must maintain quiet within normal hearing range of the designated recreation sites.

11. You must not cut or collect any firewood, including dead and down wood or any other vegetative material, at any shoreline site.

12. You must not moor vessels to vegetation, signs, shade ramadas, tables, grills or fire rings, toilets, trash receptacles, or other objects or structures not designed for such use.

13. You must not beach or moor a vessel in excess of posted time limits.

14. You must not discharge or possess any fireworks.

15. You must keep the site free of litter and trash during the period of occupancy. You must remove all personal property, and the site must be clean, upon your departure.

16. You must keep pets on a leash no longer than six (6) feet.

17. You must not leave pets unattended, and you must remove pet waste from the site or dispose of it in trash receptacles.

18. You must not violate any provisions of boating laws as described in Title 5, Chapter 3, of the Arizona Revised Statutes, or the California Harbors and Navigation Code (as applicable).

19. Possession of alcoholic beverages by a person under the age of 21 years is prohibited.

20. Consumption of alcoholic beverages by a person under the age of 21 years is prohibited.

21. You must not possess glass beverage containers on land or in the water. You may possess glass beverage containers only within the confines of a vessel.

22. Reserving recreation sites in any manner, including personal property left unattended overnight on site, is prohibited.

23. Recreation sites used for camping activities must be occupied overnight by the party that paid for such use.

24. You must not leave personal property unattended for more than 24 hours. Personal property left unattended beyond such time limit is subject to disposition under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 552).

25. It is prohibited to engage in any uses which are dependent upon, make contact with, or impact those public lands which make up the shoreline or bottom of Lake Havasu, without the proper written authorization or without having paid the appropriate amenity fees.

Supplementary Rules for the Parker Strip Recreation Management Area

The preceding Lake Havasu Shoreline Area Supplementary Rules 1, 2, 3, 4, 5, 6, 7, 8, 14, 15, 16, 17, 18, 20, 21, 23, and 25, also apply to the Parker Strip Recreation Management Area. In addition, the following rules apply to the Parker Strip Recreation Management Area:

26. You must not park or operate vehicles in violation of posted restrictions.

27. Disorderly conduct is prohibited.

28. On BLM-managed campgrounds, no more than eight (8) persons may occupy one campsite.

29. The operation of off-highway vehicles within any BLM-managed campground, concession resort, or facility is prohibited. This includes, but is not limited to, off-road only motorcycles, three to eight wheel all terrain vehicles, and those motor vehicles of which the primary manufactured purpose is for off-highway, rough terrain, or non-highway utility usage. This prohibited use applies to all off-highway vehicles on the California side of the Parker Strip Recreation Management Area that are not specifically registered, insured, or legal in the State of California for highway operation. This prohibition is in effect regardless of registration or highway operations laws of another state or foreign jurisdiction. This prohibited use also applies to all off-highway vehicles on the Arizona side of the Parker Strip Recreation Management Area that are not specifically registered, insured, or legal for highway operation in the State of Arizona. This prohibition is in effect regardless of registration or highway operations laws of another state or foreign jurisdiction. Non-highway legal golf carts may be operated only within BLM-managed campgrounds, concession resorts, and facilities. Operation of an off-highway vehicle or golf cart upon any public highway or road, or the shoulders thereof, is prohibited. The operation of a golf cart by a person under 16 years of age is prohibited, unless under the immediate and direct supervision of a person over 21 years of age.

30. Camping within the Parker Strip Recreation Management Area is authorized at concession resorts, designated BLM campgrounds, or at least one-half mile from paved roads. Camping is prohibited in the parking or staging areas of the Copper Dunes Basin Off-Highway Vehicle Area and the Crossroads Off-Highway Vehicle Area. Dispersed camping between Parker Dam Road, the Whipple Mountains, and the adjacent Metropolitan Water District of Southern California (MWD) lands is allowed only in connection with off-highway vehicle recreational activities. Camping activities may not interfere with active off-highway vehicle use in any manner.

Supplementary Rules for Craggy Wash

1. You must maintain your campsite free of trash and litter.

2. You must not operate a motor vehicle at a speed more than 15 miles per hour.

3. You must maintain quiet between the hours of 10 p.m. and 6 a.m. within hearing range of any other person or camp unit. You must not operate a generator during these hours.

4. You must not collect firewood in this area, including any dead and down wood, or any other vegetative material.

5. You must restrain a pet with a leash not longer than six (6) feet.

6. You must not leave a pet unattended.

7. You must not possess or discharge fireworks.

8. You must not leave personal property unattended for more than 24 hours.

9. In the Craggy Wash area, camping is prohibited within one mile of the Lake Havasu City limits. Camping at Craggy Wash is limited to 14 days.

Supplementary Rules for Swansea Townsite

1. Taking any vehicle through, around, or beyond a restrictive sign, recognizable barricade, fence, or traffic control barrier is prohibited. Operation of a vehicle in a wash, off a roadway, or on an unsigned historic roadway is prohibited.

2. Camping is permitted only at designated sites. Camping stay is limited to 3 days in any 30-day period.

3. No wood collection is permitted within the Swansea Townsite, including but not limited to dead and down wood, live plants, and lumber from historic structures.

4. No item may be collected or removed from the Swansea Townsite without the written permission of the Lake Havasu Field Office Manager. This includes but is not limited to old cans, nails, lumber, bricks, or glassware, whole or broken. The use of metal detectors without written permission is prohibited.

5. Climbing, leaning, sitting, or walking on the remains of the walled structures at the Swansea Townsite inherently damages the structures, is unsafe, and is therefore prohibited. No person shall enter into any fenced area, shaft, tunnel, or structure.

6. Fires are allowed only at the designated sites and must be located in the fire ring provided. Construction of new fire rings is prohibited.

Penalties

Persons who are convicted of a violation of these supplementary rules may be sentenced to a fine not to exceed $100,000 or imprisonment not to exceed 12 months, or both, in accordance with 43 U.S.C. 1733(a), 43 CFR 8360.0–7, and 18 U.S.C. 3571.

Elaine Y. Zielinski,

State Director.

[FR Doc. E8–4120 Filed 3–3–08; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1430–ET; NMNM 116726]

Public Land Order No. 7687; Revocation of Coal Classification Order No. 89 Dated July 9, 1962; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Geological Survey Order in its entirety as it affects approximately 92,215 acres of public lands withdrawn from surface entry and reserved for coal classification purposes. The lands are no longer needed for the purpose for which they were withdrawn. This order opens the lands to surface entry subject to other segregations of record.

DATES: *Effective Date:* April 3, 2008.

FOR FURTHER INFORMATION CONTACT: Gilda Fitzpatrick, BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502, 505–438–7597.

SUPPLEMENTARY INFORMATION: The lands have been and will continue to be open

to mining and mineral leasing. Copies of the Classification Order showing the complete legal description are available from the BLM New Mexico State Office at the above address.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The Geological Survey Coal Classification Order New Mexico No. 89 dated July 9, 1962, which withdrew public lands from surface entry and reserved them for coal classification purposes, is hereby revoked in its entirety. The areas aggregate approximately 92,215 acres in San Juan County.

2. At 10 a.m. on April 3, 2008, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law, the lands referenced in this order will be opened to the operation of the public land laws generally. All valid applications received at or prior to 10 a.m. on April 3, 2008, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: December 11, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E8–4117 Filed 3–3–08; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Availability of Environmental Documents. Prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: MMS prepares SEAs and FONSIs for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment pursuant to NEPA section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Anadarko Petroleum Corporation, Right-of-Way Pipeline Modification, SEA P–15101.	DeSoto Canyon, Blocks 621, 620, 664, 663, 707, 706, 705 & 749; Mississippi Canyon, Blocks 789, 833, 832, 876 & 920; located approximately 98 miles south of Gulf Shores, Alabama.	1/23/2007
Shell Offshore, Inc., Initial Development Operations Coordination Document, PEA N–8809.	Alaminos Canyon, Blocks 812, 813, 814 & 857, Leases OCS–G 24593, 17561, 20862, & 17565, located approximately 141.5 miles from the nearest Texas shoreline.	4/11/2007
ExxonMobil Corporation, Geological & Geophysical Exploration for Mineral Resources, SEA R–4717.	Located in the western Gulf of Mexico south of Galveston, Texas.	9/19/2007
Devon Energy Production Company, Well Stub Removal, SEA ES/SR APM MU A110–001.	Mustang Island, Block A 110, Lease OCS–G 21304, located 48 miles from the nearest Texas shoreline.	9/24/2007
Magnum Hunter Production, Inc., Well Stub Removal, SEA ES/SR APM WC 577–001.	West Cameron, Block 577, Lease OCS–G 23777, located 100 miles from the nearest Louisiana shoreline.	9/27/2007
Apache Corporation, Structure Removal, SEA ES/SR 06–150A.	South Marsh Island, Block 95, Lease OCS 00790, located 99 miles from the nearest Louisiana shoreline.	10/01/2007
Chevron U.S.A., Inc., Geological & Geophysical Exploration for Mineral Resources, SEA R–4719.	Located in the western Gulf of Mexico south of Galveston, Texas.	10/03/2007
Palace Operating Company, Structure Removal, SEA ES/SR 07–106.	Mobile, Block 988, Lease OCS–G 25046, located 25 miles from the nearest Mississippi shoreline.	10/04/2007
Chevron U.S.A., Inc., Well Conductor Removal, SEA ES/SR APM WC 48–020.	West Cameron, Block 48, Lease OCS–G 01351, located 3 miles from the nearest Louisiana shoreline.	10/04/2007
Chevron U.S.A., Inc., Geological & Geophysical Exploration for Mineral Resources, SEA R–4725.	Located in the central Gulf of Mexico south of Morgan City, Louisiana.	10/05/2007
Fairfield Industries, Geological & Geophysical Exploration for Mineral Resources, SEA L07–46, L07–47, T07–18.	Located in the western & central Gulf of Mexico south of Cameron, Louisiana.	10/05/2007
Scripps Institution of Oceanography for University of California—San Diego, Geological & Geophysical Exploration for Mineral Resources, SEA T07–14, L07–40, L07–41.	Located in the western & central Gulf of Mexico south of Galveston, Texas; south of Fourchon, Louisiana; southeast of Venice, Louisiana, respectively.	10/10/2007
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 07–054, 07–055.	South Timbalier, Block 151, Lease OCS 00463, located 32 miles from the nearest Louisiana shoreline.	10/15/2007

Activity/Operator	Location	Date
Bois D'Arc Offshore, Ltd, Structure Removal, SEA ES/SR APM SS 114–032.	Ship Shoal, Block 114, Lease OCS–G 00064, located 15 miles from the nearest Louisiana shoreline.	10/15/2007
Helis Oil & Gas Company, Structure Removal, SEA ES/SR 07–108, 07–109, 07–110, 07–111.	Eugene Island, Block 56, Lease OCS–G 23857, located 22 miles from the nearest Louisiana shoreline.	10/16/2007
WesternGeco, LLC, Geological & Geophysical Exploration for Mineral Resources, SEA L07–45.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	10/19/2007
WesternGeco, LLC, Geological & Geophysical Exploration for Mineral Resources, SEA L07–52.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	10/19/2007
ExxonMobil Corporation, Geological & Geophysical Exploration for Mineral Resources, SEA R–4737.	Located in the central Gulf of Mexico south of Morgan City, Louisiana.	10/29/2007
Century Exploration New Orleans, Inc., Structure Removal, SEA ES/SR 07–112, 07–113.	Ship Shoal, Blocks 154 & 150, Lease OCS-00419, located 36 miles from the nearest Louisiana shoreline.	10/29/2007
BP America Production Company, Structure Removal, SEA ES/SR 07–114.	Grand Isle, Block 40, Lease OCS–G 00128, located 14 miles from the nearest Louisiana shoreline.	10/30/2007
Maritech Resources, Inc., Structure Removal, SEA ES/SR 06–033A.	Eugene Island, Block 365, Lease OCS–G 13628, located 76 miles from the nearest Louisiana shoreline.	10/31/2007
Maritech Resources, Inc., Structure Removal, SEA ES/SR 07–116.	Eugene Island, Block 129, Lease OCS 00054, located 30 miles from the nearest Louisiana shoreline.	11/02/2007
Maritech Resources, Inc., Structure Removal, SEA ES/SR 07–115.	Ship Shoal, Block 299, Lease OCS–G 07759, located 62 miles from the nearest Louisiana shoreline.	11/02/2007
Maritech Resources, Inc., Structure Removal, SEA ES/SR 07–117.	Eugene Island, Block 129, Lease OCS–G 00054, located 24 miles from the nearest Louisiana shoreline.	11/05/2007
Freeport-McMoran Energy, LLC, Right-of-Way Pipeline Applications, SEA P–9314, P–9316, P–17013 & P–17272.	Main Pass, Block 299, Leases OCS–G 12362 & 01316, located approximately 14 to 16 miles from the nearest Louisiana shoreline.	11/07/2007
W & T Offshore, Inc., Structure Removal, SEA ES/SR 07–134, 07–135.	Eugene Island, Block 93, Lease OCS–00228, located 28 miles from the nearest Louisiana shoreline.	11/13/2007
CGG Veritas, Geological & Geophysical Prospecting for Mineral Resources, SEA T07–21.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	11/15/2007
BT Operating Company, Well Stub Removal, SEA ES/SR APM El 294–005.	Eugene Island, Block 294, Lease OCS–G 03569, located 100 miles from the nearest Texas shoreline.	11/19/2007
Energy Partners, Ltd, Structure Removal, SEA ES/SR 07–128.	East Cameron, Block 161, Lease OCS–G 15141, located 60 miles from the nearest Louisiana shoreline.	11/26/2007
Hydro Gulf of Mexico, LLC, Structure Removal, SEA ES/SR 07–125.	High Island (East Addition), Block 167, Lease OCS–G 22247, located 32 miles from the nearest Texas shoreline.	11/26/2007
Hydro Gulf of Mexico, LLC, Structure Removal, SEA ES/SR 07–119.	South Timbalier (South Addition), Block 212, Lease OCS–G 14538, located 52 miles from the nearest Louisiana shoreline.	11/26/2007
Apache Corporation, Structure Removal, SEA ES/SR 07–129.	Eugene Island, Block 175, Lease OCS–G 00438, located 42 miles from the nearest Louisiana shoreline.	11/28/2007
Hydro Gulf of Mexico, LLC, Structure Removal, SEA ES/SR 07–127.	Eugene Island, Block 213, Lease OCS–G 21639, located 65 miles from the nearest Louisiana shoreline.	11/28/2007
Hydro Gulf of Mexico, LLC, Structure Removal, SEA ES/SR 07–124.	High Island, Block 166, Lease OCS–G 06200, located 30 miles from the nearest Texas shoreline.	11/28/2007
Hydro Gulf of Mexico, LLC, Structure Removal, SEA ES/SR 07–121.	High Island, Block 202, Lease OCS–G 14870, located 29 miles from the nearest Texas shoreline.	11/28/2007
Hydro Gulf of Mexico, LLC, Structure Removal, SEA ES/SR 07–122.	High Island, Block 202, Lease OCS–G 14870, located 31 miles from the nearest Texas shoreline.	11/28/2007
TGS-NOPEC Geophysical Company, Geological & Geophysical Exploration for Mineral Resources, SEA M07–4.	Located in the central & eastern Gulf of Mexico south of Mobile, Alabama.	11/29/2007
Energy Partners, Ltd, Structure Removal, SEA ES/SR 07–130.	Matagorda Island, Block 639, Lease OCS–G 21305, located 50 miles from the nearest Texas shoreline.	11/29/2007
LLOG Exploration Offshore, Inc., Structure Removal, SEA ES/SR 07–75A.	South Timbalier, Block 187, Lease OCS–G 21120, located 44 miles from the nearest Louisiana shoreline.	11/29/2007
BP America Production Company, Structure Removal, SEA ES/SR 06–065A.	Grand Isle, Block 32, Lease OCS–00174, located 18 miles from the nearest Louisiana shoreline.	11/30/2007
Energy Partners, Ltd, Structure Removal, SEA ES/SR 07–131.	High Island, Block A6, Lease OCS–G 04734, located 34 miles from the nearest Louisiana shoreline.	11/30/2007
ATP Oil & Gas Corporation, Structure Removal, SEA ES/SR 07–136.	West Cameron, Block 143, Lease OCS–G 06572, located 24 miles from the nearest Louisiana shoreline.	11/30/2007
Apache Corporation, Structure Removal, SEA ES/SR 07–132.	West Delta, Block 133, Lease OCS–G 01106, located 35 miles from the nearest Louisiana shoreline.	11/30/2007
GX Technology Corporation, Geological & Geophysical Exploration for Mineral Resources, SEA L07–59.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	11/30/2007
BP America Production Company, Structure Removal, SEA ES/SR 07–105.	South Timbalier, Block 160, Lease OCS–G 04828, located 32 miles from the nearest Louisiana shoreline.	12/03/2007
BP America, Inc., Structure Removal, SEA ES/SR 07–107 ...	West Delta, Block 96, Lease OCS–G 01498, located 27 miles from the nearest Louisiana Shoreline.	12/05/2007
Apache Corporation, Well Stub Removal, SEA ES/SR APM EB 117–001.	Ewing Bank, Block 117, Lease OCS–G 14204, located 1,002 miles south of Galveston, Texas.	12/05/2007
Chevron U.S.A., Inc., Geological & Geophysical Exploration for Mineral Resources, SEA R–4752.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	12/05/2007
BP Exploration & Production, Inc., Geological & Geophysical Exploration for Mineral Resources, SEA R–4756.	Located in the central Gulf of Mexico south of Venice, Louisiana.	12/05/2007

Activity/Operator	Location	Date
Stone Energy Corporation, Structure Removal, SEA ES/SR 07–133.	Galveston, Block 213, Lease OCS–G 17120, located 12 miles from the nearest Texas shoreline.	12/06/2007
Maritech Resources, Inc., Structure Removal, SEA ES/SR 07–138, 07–139.	South Marsh Island, Block 233, Lease OCS–G 11929, located 20 miles from the nearest Louisiana shoreline.	12/06/2007
Energy Partners, Ltd, Structure Removal, SEA ES/SR 07–090A.	High Island, Block 72, Lease OCS–G 22231, located 20 miles from the nearest Texas shoreline.	12/07/2007
Apache Corporation, Structure Removal, SEA ES/SR 07–132A.	West Delta, Block 133, Lease OCS–G 01106, located 35 miles from the nearest Louisiana shoreline Location.	12/11/2007
Maritech Resources, Inc., Structure Removal, SEA 06–D35A	High Island, Block A–325, Lease OCS–G 02416, located 97 miles from the nearest Texas shoreline.	12/14/2007
Gryphon Exploration Company, Structure Removal, SEA ES/SR 07–140.	West Cameron, Block 43, Lease OCS–G 16107, located 8 miles from the nearest Louisiana shoreline.	12/14/2007
ATP Oil & Gas Corporation, Structure Removal, SEA ES/SR 07–141.	West Delta, Block 58, Lease OCS–G 00146, located 13 miles from the nearest Louisiana shoreline.	12/14/2007
Chevron U.S.A., Inc., Geological & Geophysical Exploration for Mineral Resources, SEA R–4761.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	12/19/2007
WesternGeco, LLC, Geological & Geophysical Exploration for Mineral Resources, SEA L07–76.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	12/19/2007
LLOG Exploration Offshore, Inc., Structure Removal, SEA ES/SR 07–156.	Eugene Island, Block 117, Lease OCS–G 24895, located 28 miles from the nearest Louisiana shoreline.	12/31/2007
LLOG Exploration Offshore, Inc., Structure Removal, SEA ES/SR 07–157.	Eugene Island, Block 76, Lease OCS–G 26022, located 21 miles from the nearest Louisiana shoreline.	12/31/2007
Energy Partners, Ltd, Structure Removal, SEA ES/SR 07–142.	High Island, Block A538, Lease OCS–G 18957, located 73 miles from the nearest Texas shoreline.	12/31/2007
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 07–158.	South Marsh Island, Block 217, Lease OCS–G 00310, located 7 miles from the nearest Louisiana shoreline.	12/31/2007

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION** section.

Dated: January 24, 2008.

Lars Herbst,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. E8–4064 Filed 3–3–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and were pending through December 31, 2007, and contract actions that have been completed or discontinued since the last publication of this notice on November 30, 2007. From the date of this publication, future quarterly notices during this calendar year will be limited to new, modified, discontinued, or completed contract actions. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Contract Services Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in This Document

BCP Boulder Canyon Project.
Reclamation Bureau of Reclamation.
CAP Central Arizona Project.
CVP Central Valley Project.
CRSP Colorado River Storage Project.
FR Federal Register.
IDD Irrigation and Drainage District.
ID Irrigation District.
M&I Municipal and Industrial.
NMISC New Mexico Interstate Stream Commission.
O&M Operation and Maintenance.
P–SMBP Pick-Sloan Missouri Basin Program.
PPR Present Perfected Right.
RRA Reclamation Reform Act of 1982.
SOD Safety of Dams.
SRPA Small Reclamation Projects Act of 1956.
USACE U.S. Army Corps of Engineers.
WD Water District.

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

1. *Irrigation, M&I, and miscellaneous water users; Idaho, Oregon, Washington, Montana, and Wyoming:* Temporary or interim water service contracts for irrigation, M&I, or miscellaneous use to provide up to 10,000 acre-feet of water annually for terms of up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. *Rogue River Basin Water Users, Rogue River Basin Project, Oregon:* Water service contracts; $8 per acre-foot per annum.

3. *Willamette Basin Water Users, Willamette Basin Project, Oregon:* Water service contracts; $8 per acre-foot per annum.

4. *Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; and Juniper Flat District Improvement Company, Wapinitia Project, Oregon:* Amendatory repayment and water service contracts; purpose is to conform to the RRA.

5. *Palmer Creek Water District Improvement Company, Willamette Basin Project, Oregon:* Irrigation water service contract for approximately 13,000 acre-feet.

6. *North Unit ID, Deschutes Project, Oregon:* Warren Act contract with cost of service charge to allow for use of project facilities to convey nonproject water.

7. *Queener Irrigation Improvement District, Willamette Basin Project, Oregon:* Renewal of long-term water service contract to provide up to 2,150 acre-feet of stored water from the Willamette Basin Project (USACE project) for the purpose of irrigation within the district's service area.

8. *West Extension ID, Umatilla Project, Oregon:* Contract for long-term boundary expansion to include lands outside of federally recognized district boundaries.

9. *Greenberry ID, Willamette Basin Project, Oregon:* Irrigation water service contract for approximately 7,500 acre-feet of project water.

10. *Six water user entities of the Arrowrock Division, Boise Project, Idaho:* Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of the reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program.

11. *Three irrigation water user entities, Boise Project, Idaho:* Amendatory repayment contract with New Union Ditch Company to reduce contract by 500 acre-feet of Lucky Peak Reservoir storage space and new contracts with Wilderness Ranch Owners' Association for 200 acre-feet and with Osprey Subdivision Project Owners' Association for 300 acre-feet of Lucky Peak Reservoir storage space.

12. *Six irrigation water user entities, Rogue River Basin Project, Oregon:* Long-term contracts for exchange of water service with six entities for the provision of up to 2,634 acre-feet of stored water from Applegate Reservoir (USACE project) for irrigation use in exchange for the transfer of out-of-stream water rights from the Little Applegate River to instream flow rights with the State of Oregon for instream flow use.

13. *Cowiche Creek Water Users Association and Yakima-Tieton ID, Yakima Project, Washington:* Warren Act contract to allow the use of excess capacity in Yakima Project facilities to convey up to 1,583.4 acre-feet of nonproject water for the irrigation of approximately 396 acres of nonproject land.

The following action has been reported as completed since the last publication of this notice on November 30, 2007:

1. (11) *Lake Lowell water users, Boise Project, Idaho-Oregon:* Repayment contracts for the reimbursable cost of SOD modifications to Deer Flat Dams. The Contracts have been executed.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

1. *Irrigation water districts, individual irrigators, M&I and miscellaneous water users, California, Nevada, and Oregon:* Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; temporary conveyance agreements with the State of California for various purposes; long-term contracts for similar service for up to 1,000 acre-feet annually.

2. *Contractors from the American River Division, Cross Valley Canal, San Felipe Division, West San Joaquin Division, and Elk Creek Community Services District, CVP, California:* Renewal of 29 long-term water service contracts; water quantities for these contracts total in excess of 2.1M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Public

Law 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts. Execution of long-term renewal contracts has been completed for the Friant, Delta, Shasta, and Trinity River Divisions. Long-term renewal contract execution is continuing for the other contractors.

3. *Redwood Valley County WD, SRPA, California:* Restructuring the repayment schedule pursuant to Public Law 100–516.

4. *El Dorado County Water Agency, CVP, California:* M&I water service contract to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency authorized by Public Law 101–514. The supply would be subcontracted to El Dorado ID and Georgetown Divide Public Utility District.

5. *Sutter Extension WD, Delano-Earlimart ID, and the State of California Department of Water Resources, CVP, California:* Pursuant to Public Law 102–575, cooperative agreements with non-Federal entities for the purpose of providing funding for CVP refuge water wheeling facility improvements to provide water for refuge and private wetlands.

6. *CVP Service Area, California:* Temporary water purchase agreements for acquisition of 20,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by Public Law 102–575 for terms of up to 3 years.

7. *El Dorado ID, CVP, California:* Execution of long-term Warren Act contracts for conveyance of nonproject water (one contract for Weber Reservoir and pre-1914 ditch rights in the amount of 3,344 acre-feet, and one contract for Project 184 water in the amount of 11,000 acre-feet). The contracts will allow CVP facilities to be used to deliver nonproject water to El Dorado ID for use within its service area.

8. *Horsefly, Klamath, Langell Valley, and Tulelake IDs, Klamath Project, Oregon:* Repayment contracts for SOD work on Clear Lake Dam. These districts will share in the repayment of costs, and each district will have a separate contract.

9. *Casitas Municipal WD, Ventura Project, California:* Repayment contract for SOD work on Casitas Dam.

10. *Warren Act Contracts, CVP, California:* Execution of long-term Warren Act contracts (up to 25 years) with various entities for conveyance of nonproject water in the Delta Division, the Friant Division, and the San Luis Unit facilities.

11. *Tuolumne Utilities District (formerly Tuolumne Regional WD), CVP, California:* Long-term water service contract for up to 9,000 acre-feet from New Melones Reservoir, and possibly long-term contract for storage of nonproject water in New Melones Reservoir.

12. *Banta Carbona ID, CVP, California:* Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

13. *Byron-Bethany ID, CVP, California:* Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

14. *Madera-Chowchilla Water and Power Authority, CVP, California:* Agreement to transfer the operation, maintenance, and replacement and certain financial and administrative activities related to the Madera Canal and associated works.

15. *Montecito WD, Cachuma Project, California:* Contract to transfer title of distribution system to the Montecito WD. Title transfer authorized by Public Law 108–315, ''Carpinteria and Montecito Water Distribution Conveyance Act of 2004.''

16. *Sacramento Suburban WD, CVP, California:* Execution of a long-term Warren Act contract for conveyance of nonproject water. The contract will allow CVP facilities to be used to deliver nonproject water provided from the Placer County Water Agency to Sacramento Suburban WD for use within its service area.

17. Truckee Meadows Water Authority, Town of Fernley, State of California, City of Reno, City of Sparks, Washoe County, State of Nevada, Truckee-Carson ID, and any other local interest or Native American Tribal Interest who may have negotiated rights under Public Law 101–618; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and the Preliminary Settlement Agreement. The contracts shall be consistent with the Truckee River Water Quality Settlement Agreement and the terms and conditions of the proposed Truckee River Operating Agreement.

18. *San Joaquin Valley National Cemetery, U.S. Department of Veteran Affairs, Delta Division, CVP, California:* Renewal of the long-term water service contract for up to 850 acre-feet. The contract was executed on February 28, 2005. The wheeling agreement for conveyance through the California State Aqueduct is pending.

19. *A Canal Fish Screens, Klamath Project, Oregon:* Negotiation of an O&M contract for the A Canal Fish Screen with Klamath ID.

20. *Ady Canal Headgates, Klamath Project, Oregon:* Transfer of operational control to Klamath Drainage District of the headgates located at the railroad. Reclamation does not own the land at the headgates, only operational control pursuant to a railroad agreement.

21. *Delta Lands Reclamation District No. 770, CVP, California:* Long-term Warren Act for conveying nonproject flood flows.

22. *Pershing County Water Conservation District, Pershing County, Lander County, and the State of Nevada, Humboldt Project, Nevada:* Title transfer to lands and features of the Humboldt Project.

23. *PacifiCorp, Klamath Project, Oregon:* Execution of long-term agreement for lease of power privilege and the O&M of Link River Dam. This agreement will provide for operations of Link River Dam, coordinated operations with the non-Federal Keno Dam, and provision of power by PacifiCorp for Klamath Project purposes to ensure project water deliveries and to meet ESA requirements.

24. *Mendota Wildlife Area, CVP, California:* Reimbursement agreement between the California Department of Fish and Game and Reclamation for conveyance service costs to deliver Level 2 water to the Mendota Wildlife Area during infrequent periods when the Mendota Pool is down due to unexpected but needed maintenance. This action is taken pursuant to Public Law 102–575, Title 34, section 3406(d)(1), to meet full Level 2 water needs of the Mendota Wildlife Area.

25. *Mercy Springs WD, CVP, California:* Proposed partial assignment of 2,825 acre-feet of Mercy Springs WD's CVP supply to San Luis WD for irrigation and M&I use.

26. *Oro Loma WD, CVP, California:* Proposed partial assignment of 4,000 acre-feet of Oro Loma WD's CVP supply to Westlands WD for irrigation and M&I use.

27. *San Luis WD, CVP, California:* Proposed partial assignment of 2,400 acre-feet of San Luis WD's CVP supply to Santa Nella County Water District for M&I use.

28. *Placer County Water Agency, CVP, California:* Proposed exchange agreement under section 14 of the 1939 Act to exchange up to 71,000 acre-feet of Placer County Water Agency's American River Middle Fork Project water for use by Reclamation, for a like amount of Sacramento River for use by Placer County Water Agency.

29. *Eighteen contractors in the Klamath Project, Oregon:* Amendment of 18 repayment contracts or negotiation of new contracts to allow for recovery of

additional capital costs to the Klamath Project. These contract actions will be accomplished through amendments to the existing repayment contracts or negotiation of new contracts.

30. *Orland Unit Water User's Association, Orland Project, California:* Repayment contract for SOD costs assigned to the irrigation purposes of Stony Gorge Dam.

31. *Contract for exchange of water among the United States, San Luis WD, and Meyers Farms Family Trust:* The contract will allow for an exchange with Reclamation of previously banked water for a like amount of project water made available to San Luis WD on behalf of Meyers Farms.

32. *Goleta WD, Cachuma Project, California:* Agreement for title transfer of a federally owned distribution system subject to approved legislation.

33. *Cawelo WD and Lindsay-Strathmore ID, CVP, California:* Long-term Warren Act contract for conveying nonproject water for a non-CVP contractor.

The following actions have been reported as discontinued or completed since the last publication of this notice on November 30, 2007:

Discontinued Contract Action

1. *(39) City of Tracy, Sacramento Municipal Utility District, Santa Clara Valley WD, and San Benito County Water Agency; all CVP; California:* Amend existing water service contracts to conform to current Reclamation law. Contracts with Santa Clara and San Benito were executed March 28, 2007. The two remaining contract actions have discontinued.

2. *(42) Elk Creek Community Services District, CVP, California:* Renewal of long-term water service contract for up to 100 acre-feet for a period of 40 years. This action item has been combined into item No. 2.

Completed Contract Actions

1. *(21) Sacramento River Settlement Contracts, CVP, California:* Five contracts remain to be executed out of a total of 145 contracts; water quantities for these contracts total 2.2M acre-feet. These contracts will be renewed for a period of 40 years. The contracts reflect agreements to settle disputes over water rights' claims on the Sacramento River. All contracts have been executed.

2. *(30) Broadview WD, CVP, California:* Proposed assignment of 27,000 acre-feet of Broadview WD's entire CVP supply to Westlands WD for irrigation and M&I use. Contract was executed March 1, 2007.

3. *(38) Elk Creek Community Services District, California, CVP:* Interim renewal contract for up to 3 years to continue project M&I water service while the Operations Criteria and Plan consultations continue. Contract was executed August 20, 2007.

4. *(39) City of Tracy, Sacramento Municipal Utility District, Santa Clara Valley WD, and San Benito County Water Agency; all CVP; California:* Amend existing water service contracts to conform to current Reclamation law. Contracts with Santa Clara and San Benito were executed March 28, 2007. The two remaining contract actions have discontinued.

5. *(43) Westlands WD, CVP, California:* Interim renewal of water service contract (Case No. CV–79–106–EDP) for an initial period of 3 years, with subsequent interim renewal contracts of 2 years pursuant to section 3404(c) of the CVPIA. Contract was executed December 27, 2007.

6. *(44) Westlands WD, CVP, California:* Interim renewal of water service contract (No. 14–06–200–495A) for an initial period of 3 years, with subsequent interim renewal contracts of 2 years pursuant to section 3404(c) of the CVPIA. Contract was executed December 27, 2007.

7. *(49) Sacramento Municipal Utility District, CVP, California:* Amendment of existing water service contract to allow for additional points of diversion and assignment of up to 30,000 acre-feet of CVP water to the Sacramento County Water Agency. The amended contract will conform to current Reclamation law. Contract was executed July 12, 2006.

8. *(51) Sacramento Area Flood Control Agency, CVP, California:* Execution of a long-term operations agreement for flood control operations of Folsom Dam and Reservoir to allow for recovery of costs associated with operating a variable flood control pool of 400,000 to 670,000 acre-feet of water during the flood control season. This agreement is to conform to Federal law. Contract was executed December 6, 2004.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

1. *Milton and Jean Phillips, BCP, Arizona:* Colorado River water delivery contract for 60 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

2. *John J. Peach, BCP, Arizona:* Colorado River water delivery contracts for 456 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

3. *Salt River Pima-Maricopa Indian Community, CAP, Arizona:* O&M contract for its CAP water distribution system.

4. *Miscellaneous PPR No. 38, BCP, California:* Assign Schroeder's portion of the PPR to Murphy Broadcasting.

5. *Gila Project Works, Gila Project, Arizona:* Title transfer of facilities and certain lands in the Wellton-Mohawk Division from the United States to the Wellton-Mohawk IDD.

6. *Shepard Water Company, Inc., BCP, Arizona:* Contract for the annual delivery of 50 acre-feet of fourth-priority water per year for domestic use.

7. *All-American Canal, BCP, California:* Agreement among Reclamation, Imperial ID, Metropolitan WD, and Coachella Valley WD for the federally funded construction of a reservoir(s) and associated facilities that will improve the regulation and management of Colorado River water.

8. *Wellton-Mohawk IDD, BCP, Arizona:* Amend contract No. 1–07–30–W0021 to revise the acre-foot amount for delivery of domestic use water to 12,000 acre-feet per calendar year, within the district's current overall Colorado River water entitlement.

9. *System Conservation Agreements, BCP, Arizona and California:* Develop and execute short-term agreements to implement a demonstration system conservation program to evaluate the feasibility of acquiring water through a voluntary land fallowing program to replace drainage water currently being bypassed to the Cienega de Santa Clara.

10. *Chacha AZ, LLC, BCP, Arizona:* Contract for 2,100 acre-feet per year of fourth-priority water for agricultural purposes.

11. *City of Yuma, BCP, Arizona:* Supplemental and amendatory contract to provide for additional point of delivery for a new pump station to be constructed on the Gila Gravity Main Canal, with initial intake capacity of 20 million gallons per day, building up to 40 million gallons per day at full design capacity.

12. *Basic Management, Inc., BCP, Nevada:* Amend contract to add additional service areas where part of the contractor's entitlement can be used.

13. *City of Yuma, BCP, Arizona:* Amendment to extend contract to allow for the diversion of water through Yuma Project facilities for an additional term of 10 years.

14. *Hopi Tribe, Arizona Game and Fish Commission, BCP, Arizona:* Approval of an assignment and transfer of 1,500 acre-feet of fourth-priority water entitlement from the Hopi Tribe to the Commission (MSCP Option).

15. *Hopi Tribe, BCP, Arizona:* Amend contract to decrease the Hopi Tribe's fourth-priority water entitlement by 1,500 acre-feet per year (MSCP Option).

16. *Arizona Game and Fish Commission, BCP, Arizona:* Amend contract to increase the Commission's fourth-priority water entitlement by 1,500 acre-feet per year being assigned from the Hopi Tribe (MSCP Option).

17. *Mohave County Water Authority, B&F Investment, LLC, Springs del Sol; Domestic Water Improvement District, DII-Emerald Springs; BCP; Arizona:* Approval of an assignment and transfer of 300 acre-feet of fourth-priority water entitlement from the Authority to B&F, Springs del Sol, and Emerald Springs.

18. *Mohave County Water Authority:* Amend contract to decrease the Authority's fourth-priority water entitlement by 300 acre-feet per year (La Paz County Option).

19. *Hopi Tribe, B&F Investment, Springs del Sol Domestic Water Improvement District, DII-Emerald Springs; BCP; Arizona:* Approval of an assignment and transfer of 300 acre-feet of fourth-priority water entitlement from the Hopi Tribe to B&F, Springs del Sol, and Emerald Springs.

20. *Hopi Tribe, BCP, Arizona:* Amend contract to decrease Hopi Tribe's fourth-priority water entitlement by 300 acre-feet per year (La Paz County Option).

21. *Ehrenberg Improvement Association on behalf of B&F Investment, BCP, Arizona:* Amend contract to increase Ehrenberg's fourth-priority water entitlement by 100 acre-feet per year being assigned to B&F from the Mohave County Water Authority (50 acre-feet) and from Hopi Tribe (50 acre-feet).

22. *Springs del Sol Domestic Water Improvement District, BCP, Arizona:* Enter into a new Section 5 contract with Springs del Sol for 100 acre-feet per year of fourth-priority water being assigned to Springs del Sol from the Mohave County Water Authority (50 acre-feet) and from Hopi Tribe (50 acre-feet).

23. *DII-Emerald Springs, BCP, Arizona:* Enter into a new Section 5 contract for 400 acre-feet per year of fourth-priority water being assigned to Emerald Springs by the Mohave County Water Authority (200 acre-feet) and by the Hopi Tribe (200 acre-feet).

24. *Cibola Valley IDD, BCP, Arizona:* Amend contract to decrease the district's fourth-priority water entitlement by 2,700 acre-feet per year that is being assigned from the district to Arizona Recreational Facilities, LLC.

25. *Arizona Recreational Facilities, LLC; BCP; Arizona:* Enter into a new Section 5 contract with Arizona Recreational Facilities for 2,700 acre-feet per year of fourth-priority Colorado River water that is being assigned to them from the Cibola Valley IDD.

The following actions have been reported as discontinued or completed since the last publication of this notice on November 30, 2007:

Discontinued Contract Action

1. *(26) Cibola Valley IDD, BCP, Arizona:* Assign 396 acre-feet per year of the District's entitlement to fourth-, fifth-, and sixth-priority water to The Conservation Fund.

Completed Contract Actions

1. *(4) Maricopa-Stanfield IDD, CAP, Arizona:* Amend distribution system repayment contract No. 4–07–30–W0047 to reschedule repayment pursuant to June 28, 1996, agreement. Contract was executed December 14, 2007.

2. *(5) Indian and non-Indian agricultural and M&I water users, CAP, Arizona:* New and amendatory contracts for repayment of Federal expenditures for construction of distribution systems. Contract was executed December 14, 2007.

3. (*6) Central Arizona IDD, CAP, Arizona:* Amend distribution system repayment contract No. 4–07–30–W0048 to modify repayment terms pursuant to final order issued by U.S. Bankruptcy Court, District of Arizona. Contract was executed December 14, 2007.

4. *(7) Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California:* Contract to fund the Department of the Interior's expenses to conserve seepage water from the Coachella Branch of the All-American Canal in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act, dated November 17, 1988. The contract has been executed.

5. *(11) North Gila Valley IDD, Yuma ID, and Yuma Mesa IDD; Yuma Mesa Division, Gila Project; Arizona:* Administrative action to amend each district's Colorado River water delivery contract to effectuate a change from a ''pooled'' water entitlement for the Division to a quantified entitlement for each district. The contracts have been executed.

6. *(12) Indian and/or non-Indian M&I users, CAP, Arizona:* New or amendatory water service contracts or subcontracts in accordance with an anticipated final record of decision for reallocation of CAP water, as discussed in the Secretary of the Interior's notice published on page 41456 of the FR on July 30, 1999. Contract was executed December 14, 2007.

7. *(13) Litchfield Park Service Company, CAP, Arizona:* Proposed partial assignments of subcontract for 5,590 acre-feet of CAP M&I water to the Central Arizona Water Conservation District, which is exercising its authority as the Central Arizona Groundwater Replenishment District, and to the cities of Avondale, Carefree, and Goodyear. Contract was executed August 14, 2007.

8. *(16) Various irrigation districts, CAP, Arizona:* Amend distribution system repayment contracts to provide for partial assumption of debt by the Central Arizona Water Conservation District and the United States upon enactment of Federal legislation providing for resolution of CAP issues. Contract was executed December 14, 2007.

9. *(17) Mohave County Water Authority, BCP, Arizona:* Amendatory Colorado River water delivery contract to include the delivery of 3,500 acre-feet per year of fourth-priority water and to delete the delivery of 3,500 acre-feet per year of fifth-or sixth-priority water. Contract was executed June 22, 2007.

10. *(19) Sunrise Water Company, CAP, Arizona:* Proposed assignment of subcontract for 944 acre-feet of CAP M&I water per year to the Central Arizona Water Conservation District, which is exercising its authority as the Central Arizona Groundwater Replenishment District. Contract was executed August 14, 2007.

11. *(20) West End Water Company, CAP, Arizona:* Proposed assignment of subcontract for 157 acre-feet of CAP M&I water per year to the Central Arizona Water Conservation District, which is exercising its authority as the Central Arizona Groundwater Replenishment District. Contract was executed August 14, 2007.

12. (21) *New River Utilities Company, CAP, Arizona:* Proposed assignment of subcontract for 1,885 acre-feet of CAP M&I water to the Central Arizona Water Conservation District, which is exercising its authority as the Central Arizona Groundwater Replenishment District. Contract was executed August 14, 2007.

13. *(22) Metropolitan WD and others, BCP, Arizona and California:* Contract to provide for the recovery by Metropolitan WD of interstate underground storage credits previously placed in underground storage in Arizona by the Central Arizona Water Conservation District under agreements executed in 1992 and 1994, and to document the Arizona Water Banking Authority's responsibility in agreeing to Arizona's forbearance in the use of Colorado River water to permit the

Secretary of the Interior to release that quantity of water for diversion and use by Metropolitan WD. Letter agreement was executed December 20, 2006.

14. *(25) Arizona Water Settlements Act, CAP, Arizona:* Implementation of the contracting requirements of Title I Central Arizona Project Settlement Act of 2004, Title II Gila River Indian Community Water Rights Settlement, Title III Southern Arizona Water Rights Settlement, and Title IV San Carlos Apache Tribe Water Rights Settlement. Contracts were executed December 14, 2007.

15. *(27) Mohave County Water Authority, BCP, Arizona:* Amend contract No. 04-XX–30-W0431 to provide for a change of type and place of use of water. Contract was executed July 6, 2007.

16. *(34) Mohave County Water Authority, BCP, Arizona:* Assign a portion of Mohave County's Colorado River water entitlement to the Arizona Game and Fish Commission. Contract was executed September 25, 2007.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

1. *Individual irrigators, M&I, and miscellaneous water users; Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico:* Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10, 000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) *Camp Id-Ra-Ha-Je West Association, Aspinall Storage Unit, CRSP:* Camp Id-Ra-Ha-Je West Association has requested a 40-year water service contract for 1 acre-foot of M&I water out of Blue Mesa Reservoir, which requires Camp Id-Ra-Ha-Je West Association to present a Plan of Augmentation to the Division 4 Water Court.

(b) *Maureen A. Call, Aspinall Storage Unit, CRSP:* Ms. Call has requested a 40-year water service contract for 1 acre-foot of M&I water out of Blue Mesa Reservoir, which requires Ms. Call to present a Plan of Augmentation to the Division 4 Water Court.

(c) *Vanessa Rueckert (Hidden Mesa Estates), Aspinall Storage Unit, CRSP:* Ms. Rueckert has requested a 40-year water service contract for 1 acre-foot of M&I water out of Blue Mesa Reservoir, which requires Ms. Rueckert to present a Plan of Augmentation to the Division 4 Water Court.

(d) *Thomas Alan Kay (North Fork Reserve), Aspinall Storage Unit, CRSP:* Mr. Kay has requested a 40-year water service contract for 11 acre-feet of M&I water out of Blue Mesa Reservoir, which requires them to present a Plan of Augmentation to the Division 4 Water Court.

2. *San Juan-Chama Project, New Mexico:* The United States is holding the remaining 2,990 acre-feet of project water for potential use in Indian water rights settlements in New Mexico.

3. *Various Contactors, San Juan-Chama Project, New Mexico:* The United States proposes to lease water from various contractors to stabilize flows in a critical reach of the Rio Grande in order to meet the needs of irrigators and preserve habitat for the silvery minnow.

4. *Uncompahgre Valley Water Users Association, Upper Gunnison River Water Conservancy District, and the Colorado River Water Conservation District; Uncompahgre Project; Colorado:* Water management agreement for water stored at Taylor Park Reservoir and the Wayne N. Aspinall Storage Units to improve water management.

5. *Southern Ute Indian Tribe, Florida Project, Colorado:* Supplement to contract No. 14–06–400–3038, dated May 7, 1963, for an additional 181 acre-feet of project water, plus 563 acre-feet of project water pursuant to the 1986 Colorado Ute Indian Water Rights Final Settlement Agreement.

6. *Individual Irrigators, Carlsbad Project, New Mexico:* The United States proposes to enter into long-term forbearance lease agreements with individuals who have privately held water rights to divert nonproject water either directly from the Pecos River or from shallow/artesian wells in the Pecos River Watershed. This action will result in additional water in the Pecos River to make up for the water depletions caused by changes in operations at Sumner Dam which were made to improve conditions for a threatened species, the Pecos bluntnose shiner.

7. *La Plata Conservancy District, Animas-La Plata Project, New Mexico:* Cost-sharing/repayment contract for up to 1,560 acre-feet per year of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

8. *LeChee Chapter of the Navajo Nation, Glen Canyon Unit, CRSP, Arizona:* Long-term contract for 950 acre-feet of water for municipal purposes.

9. *City of Page, Arizona, Glen Canyon Unit, CRSP, Arizona:* Long-term contract for 975 acre-feet of water for municipal purposes.

10. *El Paso County Water Improvement District No. 1 and Isleta del Sur Pueblo, Rio Grande Project, Texas:* Contract to convert up to 1,000 acre-feet of the Pueblo's project irrigation water to use for tradition and religious purposes.

11. *Project Operator, Animas-La Plata Project, Colorado:* Contract to transfer the operation, maintenance, and replacement responsibilities of most project facilities to the project operator, pursuant to section 6 of the Reclamation Act of June 17, 1902 and other Federal reclamation laws.

12. *Project Operations Committee, Animas-La Plata Project, Colorado and New Mexico:* Agreement among the United States and the project sponsors to coordinate and oversee the necessary operations, maintenance, and replacement activities of the project works.

13. *Southern Ute Indian Tribe, Animas-La Plata Project, Colorado:* Water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

14. *Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado:* Water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

15. *Navajo Nation, Animas-La Plata Project, Colorado and New Mexico:* Water delivery contract for 4,680 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

16. *State of Colorado, Animas-La Plata Project, Colorado and New Mexico:* Cost-sharing/repayment contract for up to 10,440 acre-feet per year of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

17. *Public Service Company of New Mexico, Reclamation, and the U.S. Fish and Wildlife Service; San Juan River Basin Recovery Implementation Program:* The agreement identifies that Reclamation may provide cost-share funding for the recovery monitoring and research, and O&M of the constructed fish passage at the Public Service Company's site pursuant to Public Law 106–392, dated October 30, 2000, 114 Stat. 1602.

18. *The Grand Valley Water Users Association, Reclamation, and the U.S. Fish and Wildlife Service:* Construction and O&M of a fish passage and fish screen facilities at the Grand Valley Diversion Dam and Government Highline Canal Facilities to facilitate recovery of endangered fish species in

the Colorado River Basin (October 30, 2000, 114 Stat. 1602, Pub. L. 106–392).

19. *Central Utah Project, Utah:* Petition for project water among the United States, the Central Utah Water Conservancy District, and the Duchesne County Water Conservancy District for use of 2,500 acre-feet of irrigation water from the Bonneville Unit of the Central Utah Project.

20. *Navajo Nation, San Juan River Dineh Water Users, Reclamation, and U.S. Fish and Wildlife Service; San Juan River Basin Recovery Implementation Program:* The agreement identifies that Reclamation may provide cost-share funding for the recovery monitoring and research, and O&M of the constructed fish passage at the Hogback Diversion Dam, pursuant to Public Law 106–392 dated October 30, 2000, 114 Stat. 1602.

21. *Jensen Unit, Central Utah Project, Utah:* The Uintah Water Conservancy District has requested a contract with provision to prepay at a discounted rate the remaining 3,300 acre-feet of unmarketed project M&I water.

22. *Warren-Vosburg Ditch Company, Animas-La Plata Project, Colorado and New Mexico:* Contract for payment of O&M costs associated with the Warren-Vosburg ditch.

23. *Aaron Million, Million Conservation Resource Group, Flaming Gorge Storage Unit, CRSP:* Mr. Million has requested a Standby Contract to secure the first right to contract for up to 165,000 acre-feet annually of M&I water service from Flaming Gorge Reservoir for a proposed privately financed and constructed transbasin diversion project.

24. *Weber Basin Water Conservancy District, Weber Basin Project, Utah:* Contract providing for the district to repay to the United States 15 percent of the cost of Phase I SOD modifications to the foundation at Arthur V. Watkins Dam.

25. *Weber Basin Water Conservancy District, Weber Basin Project, Utah:* Contract providing for the district to repay to the United States 15 percent of the cost of Phase II SOD modifications to the foundation at Arthur V. Watkins Dam.

26. *Cottonwood Creek Consolidated Company, Emery County Project, Utah:* Cottonwood Creek Consolidated Irrigation Company has requested a contract for carriage of up to 5,600 acre-feet of nonproject water through Cottonwood Creek-Huntington Canal.

27. *Albuquerque Bernalillo County Water Utility Authority and Reclamation, San Juan-Chama Project, New Mexico:* Contract to store up to 50,000 acre-feet of project water in Elephant Butte Reservoir. The proposed contract would have a 40-year maximum term and would replace existing contract No. 3–CS–53–01510 which expires on January 26, 2008. The Act of December 29, 1981, Public Law. 97–140, 95 Stat. 1717 provides authority to enter into this contract.

28. *Dolores Water Conservancy District, Dolores Project, Colorado:* The District has requested a water service contract for 1,402 acre-feet of newly identified project water for irrigation. The proposed water service contract will provide 417 acre-feet of project water for irrigation of the Ute Enterprise and 985 acre-feet for use by the District's full-service irrigators.

29. *Carlsbad ID and New Mexico Interstate Stream Commission, Carlsbad Project, New Mexico:* Contract, for a 5-year term, for the District to perform phreatophyte (Salt Cedar) control and for the Commission to provide annual funding of $150,000.

The following actions have been reported as discontinued or completed since the last publication of this notice on November 30, 2007:

Discontinued Contract Action

1. (18) Carlsbad ID and the NMISC, Carlsbad Project, New Mexico: Contract for storage and delivery of water produced by the NMISC's River Augmentation Program, among Reclamation, Carlsbad ID, and the NMISC. This will allow for storage of NMISC water in project facilities resulting in additional project water supply.

Completed Contract Actions

1. *(1)(e) Old Castle SW Group dba United Companies, Aspinall Storage Unit, CRSP:* United Companies has requested a 40-year water service contract for 5 acre-feet of M&I water out of Blue Mesa Reservoir, which requires United Companies to present a Plan of Augmentation to the Division 4 Water Court. Contract was executed September 24, 2007.

2. *(1)(f) Ward Creek LLC, Aspinall Storage Unit, CRSP:* Ward Creek LLC has requested a 40-year water service contract for 1 acre-foot of M&I water out of the Blue Mesa Reservoir, which requires Ward Creek LLC to present a Plan of Augmentation to the Division 4 Water Court. Contract was executed October 9, 2007.

3. *(27) North Fork Water Conservancy District and Ragged Mountain Water Users Association, Paonia Project, Colorado:* North Fork and Ragged Mountain have requested a contract for supplemental water from the Paonia Project. This contract is for municipal uses. Contract was executed May 21, 2007.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59101, telephone 406–247–7752.

1. *Individual irrigators, M&I, and miscellaneous water users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming:* Temporary (interim) water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term of up to 1 year.

2. *Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado:* Water service contracts for irrigation and M&I; contracts for the sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

3. *Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado:* Second round water sales from the regulatory capacity of Ruedi Reservoir. Water service and repayment contracts for up to 17,000 acre-feet annually for M&I use.

4. *Garrison Diversion Unit, P–SMBP, North Dakota:* Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Dakota Water Resources Act of 2000; negotiation of repayment contracts with irrigators and M&I users.

5. *Highland-Hanover ID, Hanover-Bluff Unit, P–SMBP, Wyoming:* Negotiate long-term water service contract.

6. *Upper Bluff ID, Hanover-Bluff Unit, P–SMBP, Wyoming:* Negotiate long-term water service contract.

7. *Dickinson-Heart River Mutual Aid Corporation, Dickinson Unit, P–SMBP, North Dakota:* Negotiate renewal of water service contract for irrigation of lands below Dickinson Dam in western North Dakota.

8. *Savage ID, P–SMBP, Montana:* The District is currently seeking title transfer. The contract is subject to renewal pending outcome of the title transfer process. The existing interim contract is due to expire in May 2008. Preparing to renew a long term contract upon request by the District.

9. *Dickinson Parks and Recreation District, Dickinson Unit, P–SMBP, North Dakota:* A temporary contract has been negotiated with the District for minor amounts of water from Dickinson Reservoir. Negotiate a long-term water service contract for minor amounts of water from Dickinson Dam.

10. *Fryingpan-Arkansas Project, Colorado:* Consideration of excess capacity contracts in the Fryingpan-Arkansas Project.

11. *Fryingpan-Arkansas Project, Colorado:* Consideration of requests for long-term contracts for the use of excess capacity in the Fryingpan-Arkansas Project from the Southeastern Colorado Water Conservancy District, the City of Aurora, and the Colorado Springs Utilities. The contract with the City of Aurora was executed on September 12, 2007.

12. *Individual irrigators, Heart Butte Unit, P–SMBP, North Dakota:* Renew long-term water service contracts for minor amounts of less than 1,000 acre-feet of irrigation water annually from the Heart River below Heart Butte Dam.

13. *Municipal Subdistrict of the Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado:* Consideration of a new long-term contract or amendment of contract No. 4–07–70–W0107 with the Municipal Subdistrict and the Northern Colorado Water Conservancy District for the proposed Windy Gap Firming Project.

14. *Northern Integrated Supply Project, Colorado-Big Thompson Project, Colorado:* Consideration of a new long-term contract with approximately 14 regional water suppliers and the Northern Colorado Water Conservancy District for the Northern Integrated Supply Project.

15. *Stutsman County Park Board, Jamestown Unit, P–SMBP, North Dakota:* The Board is requesting a contract for minor amounts of water under a long-term contract to serve domestic needs for cabin owners at Jamestown Reservoir, North Dakota.

16. *Security Water and Sanitation District, Fryingpan-Arkansas Project, Colorado:* Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project.

17. *City of Fountain, Fryingpan-Arkansas Project, Colorado:* Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project.

18. *Colorado Springs Utilities, Colorado-Big Thompson Project, Colorado Springs, Colorado:* Consideration of a request for a long-term agreement for water substitution and power interference in the Colorado-Big Thompson Project.

19. *LeClair-Riverton ID, Boysen Unit, P–SMBP, Wyoming:* Contract renewal of long-term water service contract.

20. *Riverton Valley ID, Boysen Unit, P–SMBP, Wyoming:* Contract renewal of long-term water service contract.

21. *ExxonMobil Corporation, Ruedi Reservoir, Fryingpan–Arkansas Project, Colorado:* Consideration of ExxonMobil Corporation's request to amend its Ruedi Round I contract to include additional uses for the water.

22. *Pueblo West Metropolitan District, Pueblo West, Fryingpan-Arkansas Project, Colorado:* Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project.

23. *City of Golden, Colorado-Big Thompson Project, Colorado:* Consideration of a request for a long-term agreement for power interference in the Colorado-Big Thompson Project.

24. *Colorado River Water Conservation District, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado:* Consideration of a request for a second round water sales or repayment contract from the regulatory capacity of Ruedi Reservoir for up to 5,000 acre-feet annually for M&I uses and also providing water to the endangered fish and supplementing in-stream flows.

25. *Colorado River Water Conservation District, Colorado-Big Thompson Project, Colorado:* Long-term exchange, conveyance, and storage contract to implement the Exhibit B Agreement of the Settlement Agreement on Operating Procedures for Green Mountain Reservoir Concerning Operating Limitations and in Resolution of the Petition Filed August 7, 2003, in Case No. 49–CV–2782 (The United States v. Northern Colorado Water Conservancy District, *et al.*, U.S. District Court for the District of Colorado, Case No. 2782 and Consolidated Case Nos. 5016 and 5017).

26. *Colorado River Water Conservation District, Colorado-Big Thompson Project, Colorado:* Consideration of a request for a long-term contract for the use of excess capacity for storage and exchange in Green Mountain Reservoir in the Colorado-Big Thompson Project.

27. *Glendo Unit, P–SMBP,* Wyoming: Contract renewal for long-term water service contracts with Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company.

28. *Glendo Unit, P–SMBP, Nebraska:* Contract renewal for long-term water service contracts with Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and ID.

29. *Glendo Unit, P–SMBP, Wyoming:* Contract renewal for long-term water storage contract with Pacificorp.

30. *Roger W. Evans (Individual), Boysen Unit, P–SMBP, Wyoming:* Renewal of long-term water service contracts.

31. *City of Beloit, P–SMBP, Kansas:* Contract renewal for M&I contract.

32. *Hamlin Construction, Inc., Helena Valley Unit, P–SMBP, Montana:* Request for a long-term water service contract for M&I purposes for up to 500 acre-feet per year.

33. *Richard Davis, Helena Valley Unit, P–SMBP, Montana:* Request for a long-term water service contract for M&I purposes for up to 24 acre-feet per year.

34. *Individual Irrigators, Canyon Ferry Unit, P–SMBP, Montana:* Replace temporary 1-year contracts with long-term water service contracts for minor amounts of less than 1,000 acre-feet of irrigation water annually from the Missouri River below Canyon Ferry Dam.

35. *Individual Irrigators, Lower Marias Unit, P–SMBP, Montana:* Execute long-term water service contracts for commercial irrigation from Lake Elwell and the Marias River below Tiber Dam.

36. *Turtle Lake ID, Garrison Diversion Unit, North Dakota:* Turtle Lake ID has requested a water service contract under the Dakota Water Resources Act of 2000 as part of the Garrison Diversion Unit.

37. *Big Horn Canal ID, Boysen Unit, P–SMBP, Wyoming:* Big Horn Canal has requested a renewal of their long-term water service contract.

38. *Treeline Springs, LLP., Canyon Ferry Unit, P–SMBP, Montana:* Request for water service contract for up to 620 acre-feet of water per year for replacement of water for senior water rights.

The following actions have been reported as discontinued or completed since the last publication of this notice on November 30, 2007:

Discontinued Contract Action

1. *(33) Individual developer with Angostura Unit, P–SMBP, South Dakota:* Negotiate M&I water service contract with developer for up to ten, 10-acre tracts of land within the Angostura ID.

Completed Contract Actions

1. *(39) City of Grand Junction, City of Fruita, and Town of Palisade (Municipal Recreation Agreement) Colorado-Big Thompson Project; Colorado:* Negotiation of renewal of the Municipal Recreation Agreement to provide historic users pool surplus water from Green Mountain Reservoir for nonconsumptive municipal recreation uses. Contract was executed on August 29, 2007.

2. *(43) Greenfields ID, Sun River Project, Montana:* Modification of

Gibson Dam will be required depending on the outcome of the Corrective Action Study, and will require a contract for repayment of allocable SOD costs. Contract was executed on May 21, 2007.

3. *(51) Giant Springs, Inc., Canyon Ferry Unit, P–SMBP, Montana:* Request for a long-term contract for up to 5,600 acre-feet of water per year to fulfill the State requirement to replace water used under private rights. Contract was executed December 19, 2007.

Dated: February 1, 2008.

Roseann Gonzales,

Director, Office of Program and Policy Services, Denver Office.

[FR Doc. E8–4089 Filed 3–3–08; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION; UNITED STATES AND MEXICO

United States Section; Final Programmatic Environmental Impact Statement for Long-Term Improvements to the USIBWC Rio Grande Flood Control Projects Along the Texas-Mexico Border

AGENCY: United States Section, International Boundary and Water Commission (USIBWC).

ACTION: Notice of availability for the record of decision (ROD).

SUMMARY: This notice is provided in accordance with 40 Code of Federal Regulations (CFR) parts 1500–1508 of the National Environmental Policy Act (NEPA), and USIBWC procedures for implementing NEPA. The USIBWC anticipates the need to improve functionality of three flood control projects located in the Rio Grande along the Texas-Mexico border. Potential improvement measures are mainly associated with the project core mission of flood protection, boundary stabilization, and water delivery. Additional measures under consideration are intended to improve water use, quality, and conservation, as well as measures supporting local or regional initiatives for multipurpose use of the projects for wildlife habitat development, and improved environmental conditions.

A Programmatic Environmental Impact Statement (PEIS) was prepared to evaluate potential consequences of three action alternatives under consideration for long-term improvement of the flood control projects. The USIBWC will apply the programmatic evaluation as an overall guidance for future evaluations of individual projects, including both those currently envisioned at a conceptual level and those whose implementation is not currently anticipated but would be possible within a 20-year timeframe.

The Multipurpose Project Management Alternative was adopted among the three action alternatives as the preferred option for long-term improvements to the Rio Grande flood control projects. In implementing the preferred alternative, the USIBWC will continue to improve functionality of the flood control projects to meet its mandate for flood control, water delivery, and boundary stabilization, while supporting initiatives for improvement of environmental conditions and water resources utilization.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Borunda, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–100, El Paso, Texas 79902 or e-mail: *danielborunda@ibwc.state.gov.*

SUPPLEMENTARY INFORMATION: The USIBWC anticipates the need to improve capabilities or functionality of three flood control projects (FCP) located in the Rio Grande along the Texas-Mexico border: The Rectification FCP, extending 84.4 miles along the Rio Grande, downstream from American Diversion Dam in El Paso to Fort Quitman, Texas; the Presidio-Ojinaga FCP extending over 13.1 river miles of the Rio Grande near Presidio, Texas; and the Lower Rio Grande FCP that extends 186 river miles on the Rio Grande, from Peñitas, Texas to the Gulf of Mexico, and includes 120 miles of interior floodways. These projects were constructed to provide flood protection in urban, suburban, and agricultural areas in the United States and Mexico, facilitate water delivery, and stabilize the international river boundary.

Measures identified for potential implementation were organized into three action alternatives focusing on improvements in operation and maintenance (O&M) practices and project functionality; improvements in water quality and water utilization; and additional measures for multipurpose use of the projects beyond their core mission of flood control, water delivery and boundary preservation. Multipurpose use would include regional initiatives for improvement of habitat and environmental conditions proposed by federal agencies, local governments, and other organizations.

The USIBWC prepared a Programmatic Environmental Impact Statement, in cooperation with the United States Bureau of Reclamation, United States Fish and Wildlife Service, and United States Army Corps of Engineers, to analyze potential effects of three action alternatives for improvement of the three Rio Grande FCPs. The programmatic evaluation will be used as an overall guidance for evaluation of future improvement projects, both those already identified at a conceptual level or those whose implementation is possible within a 20-year timeframe. Once an improvement project is developed for implementation, site-specific environmental documentation will be prepared on the basis of PEIS findings and project specifications.

A Draft PEIS was released for a 45-day public review period on August 10, 2007. Nineteen responses were received during the review period, ten from regulatory agencies, six from various organizations, and three from individual reviewers. Oral comments were also received from 12 presenters during public hearings held in the Cities of El Paso, Presidio, and McAllen, Texas on August 21, 22 and 28, 2007, respectively. The Notice of Availability of the Final PEIS was published in the **Federal Register** by the Environmental Protection Agency on January 4, 2008.

Finding: Because of its potential to improve flood control and water resources management, as well as a greater potential for improvement of biological resources and environmental conditions, the MPM Alternative was identified as the preferred option for long-term improvements to the Rectification FCP, Presidio FCP, and Lower Rio Grande FCP. In implementing this alternative, the USIBWC will continue to improve functionality and maintenance of the three Rio Grande flood control projects while supporting initiatives for improvements in environmental conditions and utilization of water resources.

Availability: Single hard copies of the Record of Decision may be obtained by request at the above address. Electronic copies may also be obtained from the USIBWC Home Page at *http://www.ibwc.state.gov.*

Dated: February 25, 2008.

Susan Daniel,

General Counsel.

[FR Doc. E8–3999 Filed 3–3–08; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–634]

In the Matter of Certain Liquid Crystal Display Modules, Products Containing Same, and Methods for Using 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 January 30, 2008, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Sharp Corporation of Japan. The complaint 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 liquid crystal display modules, products containing same, and methods for using the same that infringe certain claims of U.S. Patent Nos. 6,879,364; 6,952,192; 7,304,703; and 7,304,626. 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: Bryan F. Moore, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2767.

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 February 27, 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 liquid crystal display modules, products containing same, and methods for using the same that infringe one or more of claims 5–7 of U.S. Patent No. 6,879,364; claims 1 and 4 of U.S. Patent No. 6,952,192; claims 1, 2, 6–8, 13, 14, 16, and 17 of U.S. Patent No. 7,304,703; and claims 10, 17, and 20 of U.S. Patent No. 7,304,626, 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—

Sharp Corporation, 22–22 Nagaike-cho, Abeno-ku, Osaka 545–8522, Japan.

(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:

Samsung Electronics Co., Ltd., 416 maetan-dong, Youngtong-gu, Suwon, Kyunggi-Do, Korea 443–742.

Samsung Electronics America, Inc., 105 Challenger Road, Ridgefield Park, New Jersey 07660.

Samsung Semiconductor, Inc., 3655 North First Street, San Jose, California 95134.

(c) The Commission investigative attorney, party to this investigation, is Bryan F. Moore, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, 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 orders or both directed against the respondent.

Issued: February 27, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–4072 Filed 3–3–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–635]

In the Matter of Certain Pesticides and Products Containing Clothianidin; 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 January 31, 2008, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Sumitomo Chemical Co. Ltd. of Japan and Valent U.S.A. Corporation of Walnut Creek, California. A supplement to the complaint was filed on February 19, 2008. 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 pesticides and products containing clothianidin that infringe certain claims of U.S. Patent

No. 5,034,404. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request 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: Vu Q. Bui, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2582.

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 February 27, 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 pesticides or products containing clothianidin that infringe one or more of claims 1 and 9 of U.S. Patent No. 5,034,404, 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 complainants are—

Sumitomo Chemical Co. Ltd., Tokyo Sumitomo Twin Building (East), 27–1, Shinkawa 2-chome, Chuo-ku, Tokyo 104–8260, Japan.

Valent U.S.A. Corporation, 1600 Riviera Ave., Suite 200, Walnut Creek, California 94596.

(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:

Syngenta AG, Schwarzwaldallee 215, 4058 Basel, Switzerland.

Syngenta India Ltd., Crop Protection Sector, Royal Insurance Building, 14, J. Tata Road, Mumbai 400 020, India.

Syngenta Corp., 2200 Concord Pike, Wilmington, Delaware 19803.

Syngenta Seeds Inc., 7500 Olson Memorial Highway, Golden Valley, Minnesota 55427.

Syngenta Crop Protection Inc., 410 S. Swing Rd., Greensboro, North Carolina 27409.

Garst Seed Co., 2369 330th Street, Slater, Iowa 50244.

Golden Harvest Seeds, Inc., 100JC Robinson Blvd., Waterloo, Nebraska 68130.

(c) The Commission investigative attorney, party to this investigation, is Vu Q. Bui, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 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 cease and desist order or both directed against the respondent.

Issued: February 27, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary for the Commission.

[FR Doc. E8–4074 Filed 3–3–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–578]

In the Matter of Certain Mobile Telephone Handsets, Wireless Communication Devices, and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination of the Administrative Law Judge Finding No Violation of Section *337; Termination 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'') issued by the presiding administrative law judge (''ALJ'') determining that there is no violation of section 337 of the Tariff Act of 1930.

FOR FURTHER INFORMATION CONTACT: Eric Frahm, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3107. 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: The Commission instituted this section 337 investigation on July 12, 2006, based on a complaint filed by QUALCOMM

Incorporated of San Diego, California (''Qualcomm''). 71 FR 39362 (July 12, 2006). The complaint, as amended, 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 mobile telephone handsets, wireless communications devices, and components thereof by reason of infringement of certain claims of six U.S. patents. The complaint and notice of investigation named Nokia Corporation of Finland and Nokia Inc. of Irving, Texas (collectively, ''Nokia''), as respondents. The complaint, as amended, further alleged that an industry in the United States exists as required by subsection 337(a)(2). Only claims 1 and 3 of U.S. Patent No. 5,452,473 (''the '473 patent''), claim 1 of U.S. Patent No. 5,590,408 (''the '408 patent''), and claim 2 of U.S. Patent No. 5,655,220 (''the '220 patent'') remain in the investigation.

On December 12, 2007, the ALJ issued his final ID finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. *1337). Specifically, the ALJ determined that there had been an importation of Nokia's accused products, and that none of Nokia's accused products infringe the asserted claims of the '473, '408, or '220 patents. With regard to claims 1 and 3 of the '473 patent, the ALJ determined these asserted claims were not proven to be invalid under the best mode requirement of 35 U.S.C. *112 or anticipated under 35 U.S.C. *102. The ALJ also determined that claims 1 and 3 of the '473 patent were proven to be invalid as obvious under 35 U.S.C. *103. With regard to claim 1 of the '408 patent and claim 2 of the '220 patent, the ALJ determined that these asserted claims were not proven to be invalid. The ALJ determined that a domestic industry exists that practices the '473, '408, and '220 patents. Finally, the ALJ made a recommendation that if the Commission finds a violation under section 337, a limited exclusion and cease and desist orders should issue with a bond set in the amount of 100 percent of entered value during the 60 day period of Presidential review.

On January 9, 2008, Qualcomm and Nokia each filed petitions for review. The Commission Investigative Attorney (''IA'') did not file a petition for review.

On January 23, 2008, Qualcomm and Nokia filed responses to each other's petitions for review. The IA filed his response to both petitions on January 24, 2008.

On February 5, 2008, Qualcomm filed a letter requesting that the Commission consider the recent Federal Circuit decision in *Oatey Co.* v. *IPS, Corp.,* Case No. 07–1214, slip op. (Fed. Cir. Jan. 30, 2008). Nokia filed a responsive letter on February 6, 2008.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined not to review the ALJ's determination.

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 section 210.42–45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–45).

Issued: February 27, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–4073 Filed 3–3–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on February 27, 2008, a proposed Consent Decree was lodged with the United States District Court for the District of Massachusetts in *United States* v. *Bayer CropScience Inc. et al.,* Civil Action No. 1:08-cv-10325-MLW.

In this action, the United States filed a complaint, under Sections 106, 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606, 9607(a), and 9613, alleging that Bayer CropScience Inc. and Pharmacia Corporation (''Settling Defendants'') are liable parties in connection with the Second Operable Unit at the Industri-plex Superfund Site (''Industri-plex OU2''), located in Woburn Massachusetts. At the same time as it filed its complaint, the United States lodged a proposed Consent Decree that resolves those claims and requires the Settling Defendants to (a) implement the remedy selected by EPA for Industri-Plex OU2 in a Record of Decision dated January 31, 2006, (b) pay EPA's future response costs in connection with the Consent Decree, and (c) make a payment to the United States in the amount of $6 million in reimbursement of past costs incurred in connection with Industri-plex OU2.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Bayer CropScience Inc.*, D.J. Ref. 90–11–2–228/6. Comments may also be submitted by e-mail to *pubcomment-ees.enrd@usdoj.gov*. A copy of the comments should also be sent to Donald Frankel, Trial Attorney, Environmental Enforcement Section, Department of Justice, Suite 616, One Gateway Center, Newton, MA 02458.

The Consent Decree may be examined at the Office of the United States Attorney, District of Massachusetts, U.S. Courthouse, Suite 9200, One Courthouse Way, Boston, MA 02210 (contact Bunker Henderson). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $14.50 (25 cents per page reproduction cost, not including appendices) or $136.25 (25 cents per page reproduction costs, including appendices) payable to the U.S. Treasury (if the request is by fax or e-mail, forward a check to the Consent Decree library at the address stated above).

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–4112 Filed 3–3–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—SAE Consortium Ltd.

Notice is hereby given that, on January 25, 2008, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993,

15 U.S.C. 4301 *et. seq.* (''the Act''), SAE Consortium Ltd. (''SAEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Novartis Pharmaceuticals Corporation, East Hanover, NJ has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SAEC intends to file additional written notification disclosing all changes in membership.

On September 27, 2007, SAEC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 7, 2007 (72 FR 62867).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 08–923 Filed 3–3–08; 8:45 am]

BILLING CODE 4410–11–M

NEIGHBORHOOD REINVESTMENT CORPORATION

NeighborWorks® America; Regular Board of Directors Meeting; Sunshine Act

TIME AND DATE: 10 a.m., Tuesday, March 4, 2008.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call to Order
II. Approval of the Minutes
III. Summary Report of the Audit Committee
IV. Summary Report of the Corporate Administration Committee
V. Summary Report of the Finance, Budget and Program Committee
VI. Financial Report
VII. Chief Executive Officer's Quarterly Management Report
VIII. Connecticut Housing Finance Agency Nondiscrimination Resolution
IX. Field Operations Presentation
X. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 08–943 Filed 2–29–08; 8:45 am]

BILLING CODE 7570

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste and Materials; Meeting Notice

The Advisory Committee on Nuclear Waste and Materials (ACNW&M) will hold its 187th meeting on March 18–20, 2008, at 11545 Rockville Pike, Rockville, Maryland.

Tuesday, March 18, 2008, Room T–2B3

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–5 p.m.: Discussion of ACNW&M Letter Reports (Open)—The Committee will discuss proposed ACNW&M reports on matters considered during previous meetings:

(1) Review of ICRP Publication 103—The 2007 Recommendations of the International Commission on Radiological Protection (ICRP); (2) NRC 2007 Strategic Assessment of the Low-Level Radioactive Waste Regulatory Program; (3) Scope of the Working Group Meeting on Managing Low-Activity Radioactive Waste.

Wednesday, March 19, 2008, Room T–2B3

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–10:30 a.m.: Use of Burnup Credit for Licensing Spent Fuel Transportation Casks (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC Office of Nuclear Material Safety and Safeguards, Division of Spent Fuel Storage and Transportation, regarding the use of burnup credit (BUC) and the progress in resolving BUC issues for licensing spent fuel transportation casks.

10:45 a.m.–5 p.m.: Discussion of ACNW&M Letter Reports (Open)—The Committee will continue to discuss potential and proposed ACNW&M letter reports from earlier discussions as well as a potential letter on the Use of Burnup Credit for Licensing Spent Fuel Transportation Casks.

Thursday, March 20, 2008, Room T–2B1

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–5 p.m.: Discussion of ACNW&M Letter Reports (Open)—The Committee will continue to discuss potential and proposed ACNW&M letter reports.

Procedures for the conduct of and participation in ACNW&M meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54693). In accordance with those procedures, oral or written views may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Dr. Antonio F. Dias (Telephone 301–415–6805), between 8:15 a.m. and 5 p.m. (ET), as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the ACNW&M Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW&M office prior to the meeting. In view of the possibility that the schedule for ACNW&M meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Dr. Dias as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Dr. Dias.

Video teleconferencing service is available for observing open sessions of ACNW&M meetings. Those wishing to use this service for observing ACNW&M meetings should contact Mr. Theron Brown, ACRS/ACNW&M Audio Visual Assistant (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video

teleconferencing services is not guaranteed.

During the days of the meeting, phone number 301–415–7360 should be used in order to access anyone in the ACNW&M Office.

ACNW&M meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/acnw* (ACNW&M schedules and agendas).

Dated: February 27, 2008.

Andrew L. Bates,

Advisory Committee Management Office.

[FR Doc. E8–4123 Filed 3–3–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of March 3, 10, 17, 24, 31, April 7, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 3, 2008

There are no meetings scheduled for the Week of March 3, 2008.

Week of March 10, 2008—Tentative

There are no meetings scheduled for the Week of March 10, 2008.

Week of March 17, 2008—Tentative

Monday, March 17, 2008

1 p.m. Briefing on NRC Reactor, Materials, and Waste Programs (Public Meeting) (Contact: Tamara Bloomer, 301 415–1725).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Tuesday, March 18, 2008

9:30 a.m. Briefing by Independent External Panel to Identify Vulnerabilities in the U.S. NRC's Materials Licensing Program (Public Meeting) (Contact: Aaron T. McCraw, 301–415–1277).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 24, 2008–Tentative

There are no meetings scheduled for the Week of March 24, 2008.

Week of March 31, 2008–Tentative

There are no meetings scheduled for the Week of March 31, 2008.

Week of April 7, 2008–Tentative

Monday, April 7, 2008

9:30 a.m. Briefing on Digital Instrumentation and Control (Public Meeting) (Contact: Steven Arndt, 301 415–6502).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

ADDITIONAL INFORMATION: Affirmation of ''Final Rule—10 CFR Part 73 'Safeguards Information Protection Requirements' (RIN 3150—AH57) (Tentative)'' previously scheduled on February 20, 2008, at 1:25 p.m. was cancelled.

* * * * *

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 meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no loner 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: February 28, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 08–947 Filed 2–29–08: 10:08 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

March 20, 2008 Public Hearing

Time and Date: 2 p.m. Thursday, March 20, 2008.

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Hearing Open to the Public at 2 p.m.

Purpose: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation,

Procedures: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Thursday, March 13, 2008. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduce proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Thursday, March 13, 2008. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

FOR FURTHER INFORMATION CONTACT: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *connie.downs@opic.gov.*

Dated: February 29, 2008.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 08–949 Filed 2–29–08; 11:44 am]

BILLING CODE 3210–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

March 21, 2008, Board of Directors Meeting

TIME AND DATE: Friday, March 21, 2008, 10 a.m. (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Closed session will commence at 10 a.m. (approx.)

MATTERS TO BE CONSIDERED: (Closed to the Public 10 a.m.)

1. Finance Project—West Bank.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: February 29, 2008.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 08–950 Filed 2–29–08; 11:44 am]

BILLING CODE 3210–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Existing Information Collection: Court Orders Affecting Retirement Benefits, 5 CFR 838.221, 838.421, and 838.721

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of an existing information collection. The regulations describe how former spouses give us written notice of a court order requiring us to pay benefits to the former spouse. Specific information is needed before OPM can make court-ordered benefit payments.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 19,000 former spouses apply for benefits based on court orders annually. We estimate it takes approximately 30 minutes to collect the information. The annual burden is 9,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–4107 Filed 3–3–08; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: C. Penn, Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between January 1, 2008, and January 31, 2008. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for January 2008.

Schedule B

No Schedule B appointments were approved for January 2008.

Schedule C

The following Schedule C appointments were approved during January 2008.

Section 213.3303 Executive Office of the President

Office of Science and Technology Policy

TSGS80001 Policy Assistant to the Chief of Staff and General Counsel. Effective January 03, 2008.

Office of National Drug Control Policy

QQGS80003 Confidential Assistant to the Director to the Deputy Chief of Staff. Effective January 09, 2008.

QQGS80004 Policy Analyst to the Chief of Staff. Effective January 25, 2008.

Office of the United States Trade Representative

TNGS80001 Speechwriter to the Assistant U.S. Trade Representative for Public/Media Affairs. Effective January 18, 2008.

Section 213.3304 Department of State

DSGS60990 Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs. Effective January 08, 2008.

DSGS61277 Senior Advisor to the Deputy Assistant Secretary, Bureau of Near Eastern and South Asian Affairs. Effective January 15, 2008.

DSGS61278 Special Assistant to the Deputy Assistant Secretary, Bureau of Near Eastern and South Asian Affairs. Effective January 15, 2008.

DSGS61274 Special Assistant to the Chief of Protocol. Effective January 16, 2008.

DSGS61273 Public Affairs Specialist to the Assistant Secretary for Near Eastern and South Asian Affairs. Effective January 17, 2008.

DSGS61251 Staff Assistant to the Director, Policy Planning Staff. Effective January 23, 2008.

DSGS61051 Staff Assistant to the Senior Advisor to the Secretary and White House Liaison. Effective January 24, 2008.

DSGS62176 Foreign Affairs Officer to the Assistant Secretary for International Organizational Affairs. Effective January 25, 2008.

Section 213.3305 Department of the Treasury

DYGS00457 Policy Advisor to the Chief of Staff. Effective January 30, 2008.

DYGS00486 Special Assistant to the Director of Operations. Effective January 30, 2008.

Section 213.3306 Department of Defense

DDGS17123 Special Assistant to the Deputy Executive Secretary for Legislative Affairs. Effective January 02, 2008.

DDGS17128 Staff Assistant to the Assistant Secretary of Defense (International Security Affairs). Effective January 16, 2008.

Section 213.3309 Department of the Air Force

DFGS60016 Special Counsel and Special Assistant to the General Counsel. Effective January 22, 2008.

Section 213.3310 Department of Justice

DJGS00365 Special Assistant to the Attorney General to the Chief of Staff. Effective January 07, 2008.

DJGS00183 Counsel to the Chief of Staff. Effective January 08, 2008.

DJGS00089 Senior Advisor to the Associate Attorney General. Effective January 18, 2008.

DJGS00339 Special Assistant to the Attorney General. Effective January 30, 2008.

Section 213.3311 Department of Homeland Security

DMGS00730 Counselor to the Deputy Secretary of the Department of Homeland Security. Effective January 02, 2008.

DMGS00737 Confidential Assistant to the Counselor to the Deputy Secretary. Effective January 08, 2008.

DMGS00738 Deputy Director of Advance and Travel to the Director of Scheduling and Advance. Effective January 09, 2008.

DMGS00731 Special Assistant to the Under Secretary for Intelligence and Analysis. Effective January 10, 2008.

DMGS00742 Deputy Secretary Briefing Book Coordinator to the Executive Director for Operations and Administration. Effective January 29, 2008.

Section 213.3312 Department of the Interior

DIGS00115 Special Assistant (Communications and Legislation) to the Deputy Commissioner (Director of External and Intergovernmental Affairs). Effective January 15, 2008.

Section 213.3313 Department of Agriculture

DAGS00925 Senior Advisor to the Under Secretary for Farm and Foreign Agricultural Services. Effective January 02, 2008.

DAGS00930 Senior Advisor to the Under Secretary for Farm and Foreign Agricultural Services. Effective January 25, 2008.

DAGS00923 Associate Administrator, Special Nutrition Programs to the Administrator, Food and Nutrition Service. Effective January 04, 2008.

Section 213.3314 Department of Commerce

DCGS00495 Special Assistant to the Chief of Staff. Effective January 07, 2008.

DCGS00452 Confidential Assistant to the Chief of Staff. Effective January 08, 2008.

DCGS00575 Confidential Assistant to the Director Office of White House Liaison. Effective January 08, 2008.

DCGS00237 Senior Advisor to the Under Secretary for International Trade. Effective January 22, 2008.

DCGS00526 Confidential Assistant to the Under Secretary for International Trade. Effective January 29, 2008.

DCGS00391 Special Assistant to the Under Secretary for Economic Affairs. Effective January 30, 2008.

Section 213.3315 Department of Labor

DLGS60119 Staff Assistant to the Associate Counselor to the Secretary. Effective January 03, 2008.

DLGS60130 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective January 03, 2008.

DLGS60247 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective January 11, 2008.

DLGS60092 Senior Attorney Adviser to the Solicitor of Labor. Effective January 14, 2008.

DLGS60079 Staff Assistant to the Assistant Secretary for Policy. Effective January 18, 2008.

DLGS60097 Special Assistant to the Assistant Secretary for Administration and Management. Effective January 18, 2008.

Section 213.3316 Department of Health and Human Services

DHGS60070 Special Assistant to the Assistant Secretary for Planning and Evaluation. Effective January 17, 2008.

DHGS60071 Special Assistant to the Assistant Secretary for Planning and Evaluation. Effective January 23, 2008.

DHGS60072 Confidential Assistant to the Assistant Secretary for Planning and Evaluation. Effective January 23, 2008.

Section 213.3317 Department of Education

DBGS00462 Special Assistant to the Assistant Secretary, Office of Communications and Outreach. Effective January 04, 2008.

DBGS00306 Deputy Assistant Secretary to the Assistant Secretary for Legislation and Congressional Affairs. Effective January 09, 2008.

DBGS00554 Confidential Assistant to the Deputy Chief of Staff for Policy and Programs. Effective January 09, 2008.

DBGS00217 Chief of Staff to the Assistant Secretary for Planning, Evaluation, and Policy Development. Effective January 29, 2008.

DBGS00379 Confidential Assistant to the Assistant Secretary for Postsecondary Education. Effective January 30, 2008.

Section 213.3318 Environmental Protection Agency

EPGS07027 Strategic Scheduler to the Deputy Chief of Staff (Operations). Effective January 11, 2008.

EPGS08001 Press Assistant to the Associate Administrator for Public Affairs. Effective January 25, 2008.

EPGS08002 Deputy Associate Administrator to the Associate Administrator for Public Affairs. Effective January 25, 2008.

Section 213.3325 United States Tax Court

JCGS60075 Trial Clerk to the Chief Judge. Effective January 24, 2008.

Section 213.3331 Department of Energy

DEGS00630 Senior Advisor for Communications to the Director, Office of Technology Advancement and Outreach. Effective January 04, 2008.

DEGS00627 Special Assistant for Communications to the Assistant Secretary (Electricity Delivery and Energy Reliability). Effective January 03, 2008.

DEGS00628 Assistant Press Secretary to the Director, Public Affairs. Effective January 03, 2008.
DEGS00631 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective January 18, 2008.
DEGS00632 Special Assistant to the Chief of Staff. Effective January 18, 2008.
DEGS00634 Special Assistant to the White House Liaison. Effective January 18, 2008.
DEGS00633 Press Secretary to the Director, Public Affairs. Effective January 23, 2008.
DEGS00636 Special Assistant to the Director, Public Affairs. Effective January 30, 2008.

Section 213.3332 Small Business Administration

SBGS02645 Senior Advisor to the Administrator. Effective January 18, 2008.
SBGS02646 Senior Advisor to the Associate Administrator for Entrepreneurial Development. Effective January 18, 2008.
SBGS00641 Director, Office of Strategic Alliance to the Associate Administrator for Communications and Public Liaison. Effective January 22, 2008.
SBGS00642 Assistant Administrator for Intergovernmental Affairs to the Chief of Staff. Effective January 22, 2008.
SBGS00643 Deputy Associate Administrator for Field Operations to the Associate Administrator for Field Operations. Effective January 22, 2008.
SBGS00648 White House Liaison to the Administrator. Effective January 29, 2008.

Section 213.3346 Selective Service System

SSGS03359 Executive Officer/Chief of Staff to the Director Selective Service System. Effective January 28, 2008.

Section 213.3356 Commission on Civil Rights

CCGS60029 Special Assistant to the Commissioner. Effective January 24, 2008.

Section 213.3357 National Credit Union Administration

CUOT00025 Staff Assistant to a Board Member. Effective January 07, 2008.

Section 213.3379 Commodity Futures Trading Commission

CTOT00094 Attorney Advisor (General) to the Chairperson. Effective January 18, 2008.

Section 213.3382 National Endowment for the Humanities

NHGS60075 Director of Communications to the Deputy Chairman. Effective January 09, 2008.

Section 213.3384 Department of Housing and Urban Development

DUGS60276 Staff Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner. Effective January 03, 2008.
DUGS60357 Staff Assistant to the Chief of Staff. Effective January 10, 2008.
DUGS60270 Staff Assistant to the Chief of Staff. Effective January 25, 2008.
DUGS60427 Staff Assistant to the Assistant Secretary for Administration/Chief Human Capital Officer. Effective January 25, 2008.

Section 213.3394 Department of Transportation

DTGS60383 Assistant to the Secretary for Policy to the Chief of Staff. Effective January 03, 2008.
DTGS60243 Speechwriter to the Associate Director for Speechwriting. Effective January 09, 2008.
DTGS60055 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs. Effective January 16, 2008
DTGS60341 Associate Director for Governmental Affairs to the Deputy Assistant Secretary for Governmental Affairs. Effective January 23, 2008.
DTGS60287 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance. Effective January 29, 2008.
DTGS60375 White House Liaison to the Chief of Staff. Effective January 29, 2008.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

Howard C. Weizmann,

Deputy Director.

[FR Doc. E8–4088 Filed 3–3–08; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Tuesday, March 4, 2008 at 10 a.m., in Room L–002, the Auditorium.

The subject matter of the Open Meeting scheduled for March 4, 2008 will be:

1. The Commission will consider whether to propose two new rules under the Investment Company Act concerning exchange-traded funds (''ETFs''). Proposed Rule 6c–11 would provide exemptions from restrictions of the Act, to permit ETFs to operate without the need to obtain individual exemptive orders from the Commission. The Commission also will consider related disclosure amendments, and rule revisions concerning fund of funds restrictions of that Act.

2. The Commission will consider whether to propose a rule directed at misrepresentations in connection with a seller's ability or intent to deliver securities by settlement date.

3. The Commission will consider a recommendation to propose amendments to Regulation S–P, which governs the privacy of consumer financial information. The amendments would address the Rule's provisions related to the safeguarding and disposal of financial information, and would specify information that may be transferred when employees of broker-dealers or investment advisers change firms.

Commissioner Casey, as duty officer, determined that no earlier notice of the Open Meeting was possible.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: February 27, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–4083 Filed 3–3–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28175; 812–13473]

Advisors Series Trust, et al.; Notice of Application

February 27, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: Advisors Series Trust (the ''Trust'') and FundQuest Incorporated (the ''Adviser'').

FILING DATES: The application was filed on December 31, 2007, and amended on January 28, 2008.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 24, 2008 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Julie Allecta, Esq., Paul Hastings, Janofsky and Walker, 55 Second Street, 24th Floor, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Lewis B. Reich, Senior Counsel, at (202) 551–6919, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust, a Delaware statutory trust organized as a series investment company, is registered under the Act as an open-end management investment company and currently offers thirty-three series, ten of which are advised by the Adviser (''Funds'').[1] The Adviser, a Delaware corporation and a wholly-owned subsidiary of Paribas North America, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), and will serve as investment adviser to the Funds under an investment advisory agreement with the Trust (''Advisory Agreement'') that will have been approved by each respective Fund's shareholders and the Trust's Board of Trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of either the Trust or the Adviser (''Independent Trustees'').

2. Under the terms of the Advisory Agreement, the Adviser will provide each Fund with overall management services and continuously review, supervise and administer each Fund's investment program, subject to the supervision of, and policies established by, the Board. For the investment management services it will provide to each Fund, the Adviser will receive the fee specified in the Advisory Agreement from such Fund. The Advisory Agreement will also permit the Adviser, subject to the approval of the Board and Fund shareholders, to enter into investment subadvisory agreements (''Subadvisory Agreements'') with one or more subadvisers (''Subadvisers''). The Adviser has entered into Subadvisory Agreements with various Subadvisers to provide investment advisory services to the Funds. Each Subadviser is, and every future Subadviser will be, registered as an investment adviser under the Advisers Act. The Adviser will monitor and evaluate the Subadvisers and recommend to the Board their hiring, retention or termination. Subadvisers recommended to the Board by the Adviser will be selected and approved by the Board, including a majority of the Independent Trustees. Each Subadviser will have discretionary authority to invest the assets or a portion of the assets of a particular Fund. The Adviser will compensate each Subadviser out of the fees paid to the Adviser under the Advisory Agreement.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or of the Adviser, other than by reason of serving as a subadviser to one or more of the Funds (''Affiliated Subadviser'').

4. Applicants also request an exemption from the various disclosure provisions described below that may require a Fund to disclose fees paid by the Adviser to each Subadviser. An exemption is requested to permit the Trust to disclose for each Fund (as both a dollar amount and as a percentage of each Fund's net assets): (a) The aggregate fees paid to the Adviser and any Affiliated Subadvisers; and (b) the aggregate fees paid to Subadvisers other than Affiliated Subadvisers (''Aggregate Fee Disclosure''). Any Fund that employs an Affiliated Subadviser will provide separate disclosure of any fees paid to the Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule

[1] Applicants request relief with respect to any existing and any future series of the Trust that: (a) *Is* advised by the Adviser or a person controlling, controlled by, or under common control with the Adviser; (b) uses the management structure described in the application; and (c) complies with the terms and conditions of the requested order (included in the term ''Funds''). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser will precede the name of the Subadviser.

for fees paid to their investment advisers, including the Subadvisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the shareholders rely on the Adviser's experience to select one or more Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that some Subadvisers use a ''posted'' rate schedule to set their fees. Applicants state that while Subadvisers are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will encourage potential Subadvisers to negotiate lower subadvisory fees with the Adviser.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of any new Subadviser, the affected Fund shareholders will be furnished all information about the new Subadviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in that disclosure caused by the addition of the new Subadviser. To meet this obligation, the Fund will provide shareholders within 90 days of the hiring of a new Subadviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser would derive an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then existing Independent Trustees.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

9. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets and, subject to review and approval of the Board, will (i) set each Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisers to manage all or part of a Fund's assets; (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Subadvisers; (iv) monitor and evaluate the performance of Subadvisers; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

11. No director or officer of the Trust, or director or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. The requested order will expire on the effective date of Rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–4081 Filed 3–3–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57384; File No. SR–Amex–2007–95]

Self-Regulatory Organizations; American Stock Exchange, LLC; Order Granting Approval of a Proposed Rule Change Relating to the Execution of NDX and RUT Combination Orders

February 26, 2008.

On August 20, 2007, the American Stock Exchange, LLC (''Amex'' 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, a proposed rule change regarding the definitions and the execution procedure for NDX and RUT combination orders.[2] The proposed rule change was published for comment in the **Federal Register** on September 7, 2007, for a 15-day comment period.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

The Exchange proposes to adopt Commentary .01 to Amex Rule 950–ANTE(e) to add the definitions pertaining to NDX and RUT combination orders.[4] Pursuant to proposed Commentary .01(a) to Amex Rule 950–ANTE(e), a ''NDX Combination'' is a long (short) NDX call and a short (long) NDX put having the same expiration date and strike price. An ''RUT Combination'' is a long (short) RUT call and a short (long) RUT put having the same expiration date and strike price. As defined in proposed Commentary .01(c) to Amex Rule 950–ANTE(e), a ''NDX combination order'' is an order to purchase or sell NDX options and the offsetting number of NDX Combinations defined by the delta. Further, an ''RUT combination order'' is an order to purchase or sell RUT options and the offsetting number of RUT Combinations defined by the delta. The ''delta'' is defined in proposed Commentary .01(b) to Amex Rule 950–ANTE(e) as the positive (negative) number of NDX or RUT combinations that must be sold (bought) to establish a market neutral hedge with the corresponding NDX or RUT option position.

The Exchange further proposes to adopt execution procedures regarding NDX and RUT combination orders. The proposed Amex Rule 953–ANTE(c) would enable an member holding a NDX or RUT combination order, and bidding or offering in a multiple of the minimum price variation on the basis of a total debit or credit for the order, to execute the NDX or RUT combination order even if the member has determined that the combination order may not otherwise be executable (*e.g.*, the bids and offers displayed in the Amex limit order book or in the trading crowd will not satisfy the net debit or credit price of the combination order). Pursuant to proposed Amex Rule 953–ANTE(c)(i), a member may execute an NDX or RUT combination order at the best net debit or credit price, so long as no leg of the order would trade at a price outside the currently displayed bids or offers in the trading crowd or bids or offers in the limit order book, and at least one leg of the order would trade at a price that is better than the corresponding bid or offer in the Amex limit order book.

Further, the Exchange proposes that if an NDX or RUT combination order is not executed immediately, that same order may be executed and printed at the price originally quoted for each component option series within two (2) hours after the original quote, provided the prices originally quoted satisfied the requirements of proposed Amex Rule 953–ANTE(c)(i), and, at the time of execution, no individual leg of such order trades ahead of the corresponding bid or offer in the NDX or RUT limit order book. Amex will report to the trading floor, and the Options Price Reporting Authority, component legs of an NDX or RUT combination order executed in such manner using a sold sale indicator to notify the public that the reported prices are part of an out-of-range combination trade.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires that the rules of exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national securities system, and, in general, to protect investors and the public interest.

According to Amex, it may be difficult in a volatile market to complete trades on options tied to an NDX Combination or an RUT Combination, because the originally quoted price for a component leg may be out-of-range by the time market participants are prepared to complete the transaction. By permitting execution and printing of NDX and RUT combination orders two hours from the original quote, the proposed rule change may help market participants complete such trades.

The Commission notes that the proposed rule change takes into account the protection of public customer orders by providing that no individual leg of the NDX or RUT combination order may trade ahead of the corresponding bid or offer in the NDX or RUT limit order book. Further, the Commission notes that Amex will issue a regulatory circular reminding its members that the adoption of Amex Rule 953–ANTE(c) does not minimize the best execution obligations for customer orders. The Commission also notes that Amex will report to the trading floor, and the Options Price Reporting Authority, component legs of out-of-range NDX or RUT combination orders with a sold sale indicator. The Commission believes that the indicator should help to avoid investor confusion regarding such trades and minimize any negative impact on price discovery. In addition, the indicator should help the Exchange monitor the trading of NDX and RUT combination orders.

The Commission expects the Exchange to monitor compliance with the proposal. In particular, the Commission expects the Exchange to monitor compliance with the requirement in proposed Amex Rule 953–ANTE(c)(ii) that at time of the execution no individual leg of NDX or RUT combination order trades ahead of the corresponding bid or offer in the NDX or RUT limit order book.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–2007–95) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–4079 Filed 3–3–08; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56343 (August 30, 2007), 72 FR 51481.

[4] NDX is the NASDAQ–100 Index; RUT is the Russell 2000 Index.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57376; File No. SR–CBOE–2007–104]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Range Options and Designating Range Options as Standardized Options Pursuant to Rule 9b–1 of the Exchange Act

February 25, 2008.

I. Introduction

On September 6, 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 list and trade range options. CBOE filed Amendment No. 1 to the proposal on December 3, 2007.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 28, 2007.[4] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1 and designates Range Options as standardized options pursuant to Rule 9b–1 of the Act.

II. Description of the Proposal

CBOE proposes to list and trade cash-settled, European-style Range Options that overlie any index eligible for options trading on the Exchange. Range Options will have a positive payout if the settlement value of the underlying index falls within the specified Range Length at expiration. Range Options will be based on the same framework as existing options that are traded on the Exchange. However, the maximum payout amount will be capped (as specified by the Exchange at listing) and the specific exercise settlement amount may vary based on where on the Range Length the settlement value of the underlying index value falls.

The Payout Structure of Range Options

The universe of possible payout amounts for Range Options resembles the shape of an isosceles trapezoid spread over a range of index values or the ''Range Length.'' The Range Length, or the bottom parallel (and longer) line of the trapezoid, defines the entire length of index values for which the option pays a positive amount if the settlement value of the underlying index falls within the specific Range Length. In other words, the Range Length equals the total span between two underlying index values, as set by the Exchange at listing, that is used to determine whether a Range Option is in or out of the money at expiration.

The Range Length is comprised of three segments that are defined by the ''Range Interval,'' which is a value that the Exchange will specify at listing and the minimum Range Interval will be at least 5 index points. Using the isosceles trapezoid diagram below, the ''Range Interval,'' defines congruent triangles on opposite sides of the trapezoid, which have base angles of equal degrees and equal base lengths.

The first triangle at the start of the Range Length defines the ''Low Range'' for the Range Option and if the settlement value of the underlying index value falls in the Low Range (the ''Low Range Exercise Value''), the option will pay an amount that *increases* as the index value increases within the Low Range. To determine the exercise settlement amount if the settlement value of the index falls within the Low Range, the Low Range Exercise Value will be multiplied by the contract multiplier, set by the Exchange at listing.

The second triangle at the end of the Range Length defines the ''High Range'' for the Range Option and if the settlement value of the underlying index falls in the High Range, the option will pay an amount that decreases as the index value increases within the High Range (''High Range Exercise Value''). To determine the exercise settlement amount if the settlement value of index falls within the High Range, the High Range Exercise Value will be multiplied by the contract multiplier, set by the Exchange at listing. Lastly, the Low Range and High Range are segments of equal lengths at opposite ends on the Range Length and if the settlement value of the underlying index falls at the starting value of the Low Range, at the ending value of the High Range or outside of either the Low Range or the High Range, the option will pay $0.

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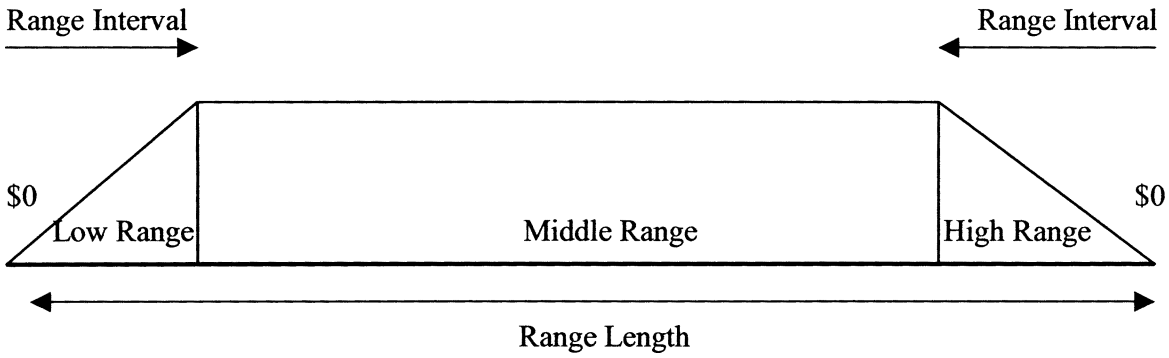
[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety. The purpose of Amendment No. 1 was to: (i) *Revise* the proposed changes to CBOE Rule 12.3, *Margin Requirements*, to specify initial and/or maintenance margin requirements for margin and cash accounts and to conform the proposed rule text to existing rule text for other products; (ii) revise the proposed definitions of ''Range Interval,'' ''Low Range and Low Range Exercise Value,'' ''High Range and High Range Exercise Value,'' ''Exercise Settlement Amount,'' and to add a new proposed definition of ''exercise price;'' (iii) revise proposed CBOE Rule 20.3 to state specifically that Range Options are a separate class from other options overlying the same index; (iv) revise proposed CBOE Rules 20.6, *Position Limits*, and 20.7, *Reports Related Position Limits and Liquidation of Positions*, to provide that Range Options will be aggregated with other option contracts on the same underlying index, including other classes of Range Options overlying the same index, for position limit purposes; (v) revise proposed CBOE Rule 20.11 to reference certain rules of The Options Clearing Corporation (''OCC''); (vi) add new proposed CBOE Rule 20.12 to provide that, for purposes of Range Options, reference in the Exchange Rules to the ''appropriate committee'' shall be read to be the ''Exchange;'' (vii) provide additional information regarding FLEX options; (viii) delete footnote 2 from the original proposed rule change, because the proposal referenced therein, SR–CBOE–2006–99, is now effective (*See* Securities Exchange Act Release No. 56792 (November 15, 2007), 72 FR 65776 (November 23, 2007)); and (ix) make conforming changes, clarifications and corrections in the ''Purpose'' section of the filing.

[4] *See* Securities Exchange Act Release No. 56993 (December 19, 2007), 72 FR 73913.



The third segment of the Range Option is defined as the ''Middle Range,'' and its length is equal to the Range Length minus twice the Range Interval, or as illustrated in the above diagram, its length is equal to the length of the top parallel (and shorter) line of the trapezoid. If the settlement value of the underlying index falls anywhere within the Middle Range at expiration, the payout is a fixed amount (set by the Exchange at listing) and does not vary depending on where in the Middle Range the index value falls. Also, if the index value falls in the Middle Range, this will be the highest amount that can be paid out for a Range Option and is defined as the ''Maximum Range Exercise Value.'' To determine the exercise settlement amount if the settlement value of the index falls anywhere within the Middle Range, the Maximum Range Exercise Value will be multiplied by the contract multiplier, set by the Exchange at listing.

Unlike other options, Range Options will only be of a single type, and there will not be traditional calls and puts. Also, the exercise or ''strike'' price for Range Options will be the Range Length that, akin to a regular strike price, will be used to determine if the Range Option is in or out of the money. When applicable, the ''strike price'' for a Range Option (*i.e.*, the Range Length) will be used to determine the degree that the option is in-the-money (capped at the Maximum Range Exercise Value) if the settlement value of the underlying index falls within either the High or Low Range of the Range Length.

Benefits of Range Options

The Exchange believes that the introduction of Range Options will provide advantages to the investing public that are not provided for by other index options. First, the Exchange believes that Range Options offer investors a relatively low risk security where the risk reduction results from knowing the maximum risk exposure when the contract is written. While there may be variations in the exercise settlement amount, the maximum exercise settlement amount is set at listing and the maximum risk therefore is limited and known at listing. Second, Range Options are structured similar to two-sided European-style binary options that provide additional flexibility because the option pays a reduced amount if the underlying index settles outside the main range covered by the option.

Proposed New Rules

To accommodate the introduction of Range Options, the Exchange proposes to adopt new Chapter XX to its rules and to make amendments to existing CBOE Rules 6.1, *Days and Hours of Business*, and 12.3, *Margin Requirements*. An introductory paragraph to Chapter XX will explain that the proposed rules in the proposed Chapter are applicable only to Range Options. Trading in Range Options also will be subject to the rules in Chapter I through XIX, XXIV, XXIVA and XXIVB, in some cases supplemented by the proposed rules in the Chapter, except for existing rules that will be replaced by the proposed rules in the Chapter and except where the context otherwise requires. As proposed, the majority of the rules governing index options will equally apply to Range Options. Those new proposed rules and those proposed amendments to existing rules pertaining to Range Options are described below.

(a) Definitions (CBOE Rule 20.1)

New Chapter XX, *Range Option Contracts*, includes new definitions applicable to Range Options in CBOE Rule 20.1. In particular, the terms ''Range Option,'' ''settlement value,'' ''Range Length,'' ''Range Interval,'' ''Low Range and Low Range Exercise Value,'' ''High Range and High Range Exercise Value,'' ''Middle Range and Maximum Range Exercise Value,'' ''contract multiplier,'' ''exercise settlement amount,'' and ''exercise price'' will be defined.

(b) Days and Hours of Business (CBOE Rule 20.2 and Amendment to CBOE Rule 6.1)

CBOE Rule 20.2 and an amendment to CBOE Rule 6.1, *Days and Hours of Business Days and Hours of Business*, provides that transactions in Range Options may be effected during normal Exchange option trading hours for other options on the same index.

(c) Designation of Range Option Contracts and Maintenance Listing Standards (CBOE Rules 20.3 and 20.4)

CBOE Rule 20.3 provides that the Exchange may from time to time approve for listing and trading on the Exchange Range Option contracts that overlie any index that is eligible for options trading on the Exchange. Range Options will be a separate class from other options overlying the same index. The Exchange may add new series of Range Options of the same class (*i.e.*, overlying the same index) as provided for by the rules governing options on the same underlying index. Additional series of Range Options may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market or to meet customer demand. The opening of a new series of Range Options on the Exchange will not affect any other series of options of the same class previously opened.

CBOE Rule 20.4 provides that the maintenance listing standards with respect to options on indexes set forth in CBOE Rule 24.2 and the Interpretations and Policies thereunder will be applicable to Range Options on indexes. CBOE Rule 24.2, *Designation of the Index*, sets forth initial and maintenance listing criteria for index options.

(d) *Limitation of Liability of Exchange and of Reporting Authority (CBOE Rule 20.5)*

CBOE Rule 20.5 provides that CBOE Rule 6.7, *Exchange Liability*, will be applicable in respect of any class of Range Options and that CBOE Rule

24.14, *Disclaimers*, will be applicable in respect of any reporting authority that is the source of values of any index underlying any class of Range Options.

(e) *Position Limits, Reporting Relating to Position Limits and Liquidation of Positions and Exercise Limits (CBOE Rules 20.6–20.8)*

CBOE Rule 20.6 provides that in determining compliance with CBOE Rules 4.11, *Position Limits*, 24.4, *Position Limits for Broad-Based Index Options*, 24.4A, *Position Limits for Industry Index Options*, and 24.4B, *Position Limits for Options on Micro Narrow-Based Indexes as Defined Under Rule 24.2(d)*, cash-settled Range Options will have position limits equal to the position limits for options on the same underlying index. In determining compliance with the applicable position limits, Range Options must be aggregated with other option contracts on the same underlying index, including other classes of Range Options overlying the same index.

CBOE Rule 20.7 provides that Range Options will be subject to the same reporting and other requirements triggered for options on the same underlying index. In computing reportable Range Options, Range Options will be aggregated with other option contracts on the same underlying index, including other classes of Range Options overlying the same index.

CBOE Rule 20.8 provides that exercise limits for Range Options will be the same as those exercise limits for other options on the same underlying index. To illustrate, CBOE Rule 24.4 provides that the standard position limit for options on the CBOE Russell 2000 Volatility Index (''RVX'') is 50,000 contracts, and the near-term position limit is 30,000 contracts. Therefore, the standard position limit for Range Options overlying the RVX also will be 50,000 contracts, and the near-term position limit would be 30,000 contracts. The 30,000 contract near-term position limit will also be the applicable exercise limit for Range Options on the RVX.[5]

For the purpose of determining compliance with the above limits, Range Options on the RVX will be aggregated with all other options on the RVX, including all series of Range Options on the RVX. This same aggregation will also be utilized to calculate the reporting requirements set forth in CBOE Rule 4.13, *Reports Related to Position Limits*.[6]

(f) *Determination of Settlement Value of the Underlying Index (CBOE Rule 20.9)*

CBOE Rule 20.9 provides that Range Options that are ''in-the-money,'' or ''out-of-the-money'' will be a function of the settlement value of the underlying index and whether at expiration the settlement values will fall within or outside of the Range Length.

(g) *Premium Bids and Offers; Minimum Increments (CBOE Rule 20.10)*

CBOE Rule 20.10 provides that all bids or offers made for Range Option contracts will be deemed to be for one contract unless a specific number of option contracts is expressed in the bid or offer. A bid or offer for more than one option contract, which is not made all-or-none, will be deemed to be for that amount or any lesser number of option contracts. An all-or-none bid or offer will be deemed to be made only for the amount stated. CBOE Rule 20.10 also will provide that all bids or offers made for Range Option contracts would be governed by the CBOE Rule 24.8, *Meaning of Premium Bids and Offers*, as that rule applies to index options.

(h) *Exercise of Range Options (CBOE Rule 20.11)*

CBOE Rule 20.11 provides that Range Options will be exercised at expiration if the settlement value of the underlying index falls within the Range Length, and that Range Options will be subject to the exercise by exception processing procedures set forth in OCC Rules 805 and 1804. OCC Rules 805 and 1804 contain provisions that, *inter alia*, permit option holders to give instructions to not exercise an option contract.

(i) *Exchange Authority (CBOE Rule 20.12)*

CBOE Rule 20.12 provides that for purposes of Range Options, references in the Exchange's Rules to the appropriate committee shall be read to be the Exchange.[7] The Exchange proposed this provision because it may determine to assign the applicable authorities with respect to Range Options to committees and/or Exchange staff. This provision will provide the Exchange with the flexibility to delegate the authorities under the rules with respect to Range Options to an appropriate committee or appropriate Exchange staff and will not have to make a rule change merely to accommodate the reassignment of such authority. For example, the Exchange may determine to delegate the authority to determine the applicable opening parameter settings to the Office of the Chairman.

(j) *FLEX Trading (CBOE Rule 20.13)*

CBOE Rule 20.13 provides that Range Options will be eligible for trading as Flexible Exchange Options, as provided for in Chapter XXIVA and XXIVB.[8] For purposes of CBOE Rules 24A.4 and 24B.4, the parties will designate the Range Length, Range Interval and Maximum Exercise Value. CBOE Rules 24A.9 and 24B.9, regarding the minimum quote width, will not apply to Range Options.

(k) Margin (Amendment to CBOE Rule 12.3)

The Exchange proposes to amend CBOE Rule 12.3, *Margin Requirements*, to include requirements applicable to Range Options.[9] Under the proposed requirements, for a margin account, no Range Option carried for a customer will be considered of any value for purposes of computing the margin requirement in the account of such customer and each Range Option carried for a customer will be margined separately. The initial and maintenance margin required on any Range Option carried long in a customer's account will be 100% of the purchase price of such Range Option. The initial and maintenance margin required on any Range Option carried short in a customer's account will be the Maximum Range Exercise Value times the contract multiplier.

For a cash account, a Range Option carried short in a customer's account will be deemed a covered position, and

[5] *See* CBOE Rule 24.5, *Exercise Limits*, which provides, *inter alia*, that in determining compliance with CBOE Rule 4.12, exercise limits for index option contracts shall be applicable to the position limits prescribed for option contracts with the nearest expiration date in CBOE Rules 24.4 or 24.4A.

[6] CBOE Rule 4.13 sets forth the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts (long or short) in any single class of option contracts.

[7] Thus, for example, references to determinations regarding the applicable opening parameter settings established by the ''appropriate Procedure Committee'' in CBOE Rule 6.2B, *Hybrid Opening System (''HOSS'')*, shall be read to be by the ''Exchange.'' *See e.g.*, Securities Exchange Act Release No. 55919 (June 18, 2007), 72 FR 34495 (June 22, 2007) (rule change providing, *inter alia*, that for purposes of Credit Options, references in the Exchange Rules to the appropriate committee shall be read to be the Exchange.).

[8] FLexible EXchange® Options (FLEX Options) are customized equity or index option contracts that provide investors with the ability to customize key contract terms, like exercise prices, exercise styles and expiration dates.

[9] The Exchange proposes the addition of new subparagraph (n) to CBOE Rule 12.3 for Range Options and proposes to reserve subparagraph (m) of this rule. The Exchange will reserve subparagraph (m) because it previously proposed to use that paragraph to codify margin requirements for a product that is the subject of another rule filing. *See* SR–CBOE–2006–105 (proposal to list and trade binary options on broad based indexes).

eligible for the cash account if either one of the following is held in the account at the time the option is written or is received into the account promptly thereafter: (i) Cash or cash equivalents equal to 100% of the Maximum Range Exercise Value times the contract multiplier; or (ii) an escrow agreement. The escrow agreement must certify that the bank holds for the account of the customer as security for the agreement: (A) Cash, (B) cash equivalents, (C) one or more qualified equity securities, or (D) a combination thereof having an aggregate market value of not less than 100% of the Maximum Range Exercise Value times the contract multiplier and that the bank will promptly pay the member organization the cash settlement amount in the event the account is assigned an exercise notice.

The Exchange believes that these proposed levels are appropriate because risk exposure will be limited with Range Options and the proposed customer initial and maintenance margin will be equal to the maximum risk exposure.[10]

(l) Options Disclosure Document

It is expected that OCC will seek a revision to the Options Disclosure Document (''ODD'') to incorporate Range Options.

(m) Systems Capacity

The Exchange represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of Range Options.

The Exchange does not anticipate that there will be any additional quote mitigation strategy necessary to accommodate the trading of Range Options.

(n) Surveillance Program

The Exchange represents that it will have in place adequate surveillance procedures to monitor trading in Range Options prior to listing and trading such options, thereby helping to ensure the maintenance of a fair and orderly market for trading in Range Options.

III. Discussion

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that Range Options would provide investors with a potentially useful investment choice. The Commission notes that investors now can replicate the features and structure of Range Options through the use of currently available options traded on the Exchange.[13]

The Commission notes that it previously approved rules relating to the listing and trading of FLEX Options on CBOE, which give investors and other market participants the ability to individually tailor, within specified limits, certain terms of those options.[14] The current proposal incorporates Range Options that trade as FLEX Options into these existing rules and regulatory framework. The Commission finds that the Exchange's proposal to allow Range Options to be eligible for trading as FLEX Options is consistent with the Act.

The Commission believes that the proposed position limits and margin rules for Range Options are reasonable and consistent with the Act. Setting position and exercise limits on Range Options that are equal to those limits on options on the same underlying index appears to reasonably balance the promotion of a free and open market for these securities with minimization of incentives for market manipulation. In addition, the proposed margin rules appear reasonably designed to deter a member or its customer from assuming an imprudent position in Range Options.

In support of its proposal, CBOE made the following representations:

- CBOE has in place an adequate surveillance program to monitor trading in Range Options and intends to largely apply its existing surveillance program for options to the trading of Range Options; and
- CBOE has the necessary systems capacity to support the new options series that would result from the introduction of Range Options.

This approval order is based on CBOE's representations.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–2007–104), as modified by Amendment No. 1, is hereby approved.

It is further ordered, pursuant to Rule 9b–1(a)(4) under the Act,[15] that Range Options are designated as standardized options.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–4104 Filed 3–3–08; 8:45 am]

BILLING CODE 8011–01–P

[10] In accordance with CBOE Rule 12.10, *Margin Required is Minimum*, the Exchange has the ability to determine at any time to impose higher margin requirements than those described above in respect of any Range Option position when it deems such higher margin requirements are appropriate.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] The payout structure of a Range Option can be replicated by purchasing four calls or puts with varying strike prices. Range Options will enable investors to obtain the same payout structure by purchasing one option, with the potential of significantly reducing investors' transaction costs. Therefore, the Commission is designating Range Options as standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act. *See* Securities Exchange Act Release Nos. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993) and 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994).

[14] *See* Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993).

[15] 17 CFR 240.9b–1(a)(4).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57386; File No. SR–Phlx–2008–02]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change To Amend By-Law Article XIV, Section 14–5 and Phlx Rule 50

February 27, 2008.

On January 8, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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: (i) Modify the timeframes within which monies owed to the Exchange would become reportable to the Board of Governors (''Board'') for further action; (ii) eliminate references to the monetary threshold of $10,000; (iii) conform By-Law language to indicate that Members, Member Organizations, participants,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and participant organizations would be subject to being terminated for failure to pay; and (iv) make other clarifying amendments. The proposed rule change was published for comment in the **Federal Register** on January 23, 2008.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Exchange proposes to modify the timeframes within which monies owed to the Exchange would become reportable to the Board, and by which Members, Member Organizations, participants, and participant organizations would be subject to a suspension or termination. Specifically, a Member, or Member Organization, participant, or participant organization or employee thereof shall be referred directly to the Board for failure to: (i) Pay fines and/or other monetary sanctions within 30 days after notice thereof; or (ii) pay dues, foreign currency options users' fees, fees, other charges, and/or other monies due, including late charges, within 90 days from the date of the original invoice. The proposed rule change would eliminate the references to the monetary threshold of $10,000 from both By-Law Article XIV, section 14–5 and Rule 50, so that all past due amounts are reportable to the Board within the specified proposed new timeframes. In addition, the proposed change to By-Law Article XIV, section 14–5 clarifies that the Board also has the power to terminate, not just suspend, any permit or rights and privileges of a foreign currency options participation of any Member, foreign currency options participant, Member Organization or participant organization or employee thereof for failure to pay monies owed to the Exchange.[4]

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.[5] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[6] 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 modified timeframes within which past due fines, dues, fees, and other charges owed to the Exchange would become reportable to the Board appear reasonable and continue to allow appropriate notice to the affected parties of any arrearages. In addition, the proposed change will allow the Board to handle collection matters directly without regard to the amount, which should enhance the Exchange's collection efforts.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2008–02) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–4080 Filed 3–3–08; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 57155 (January 15, 2008), 73 FR 4038.

[4] The Commission notes that By-Law Article XIV, Section 14–1 already gives the Board the power to terminate a permit or participation for failure to pay any fees, dues, or charges owed to the Exchange.

[5] 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).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Federal Regulatory Enforcement Fairness Hearing; Region III Regulatory Fairness Board

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, notice is hereby given that the U.S. Small Business Administration (SBA) Region III Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a National Regulatory Fairness Hearing on Wednesday, March 12, 2008, at 10 a.m. The forum is open to the public and will take place at the EPA East Building, Ceremonial Hearing Room, 1201 Constitution Avenue, NW., Room 1153, Washington, DC 20460. The purpose of the meeting is for Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting America's small business.

For further information, please contact Christina Marinos, Special Assistant, Office of the National Ombudsman, 409 3rd Street, Suite 7125, Washington, DC 20416, phone (202) 401–8254 and fax (202) 292–3423, e-mail: *Christina.marinos@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Cherylyn LeBon,

Assistant Administrator for Intergovernmental Affairs, SBA Committee Management Officer.

[FR Doc. E8–4101 Filed 3–3–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. FHWA–2008–0025]

Agency Information Collection Activities: Notice of Request for Renewal of a Previously Approved Information Collection

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of an extension of a currently approved information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on October 23, 2007. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 3, 2008.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC, 20503, or e-mail at *oira submission@omb.eop.gov,* Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2008–0025.

FOR FURTHER INFORMATION CONTACT: David Walterscheid, 720–963–3073, Office of Real Estate Services, Federal Highway Administration, 12300 West Dakota Ave., Room 175, Lakewood, CO 80228, between 7:30 a.m. to 4:30 p.m.,

Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs.

OMB Control #: 2105–0508

Background: This program implements 42 U.S.C. 4602, concerning acquisition of real property and relocation assistance for displaced persons for Federal and federally-assisted programs. It prohibits the provision of relocation assistance and payments to persons not legally in the United States (with certain exceptions). The information collected consists of a certification of residency status from affected persons to establish eligibility for relocation assistance and payments. Displacing agencies will require each person who is to be displaced by a Federal or federally-assisted project, as a condition of eligibility for relocation payments or advisory assistance, to certify that he or she is lawfully present in the United States.

Respondents: Federal agencies, State highway agencies, local government highway agencies, and airport sponsors receiving financial assistance for expenditures of Federal funds on acquisition and relocation payments and required services to displaced persons.

Estimated Number of Respondents: 1,460 for file maintenance and 52 state highway agencies for statistical reports.

Estimated Average Burden per Response: The average burden per response is 16.5 hours.

Estimated Total Annual Burden Hours: 25,000 hours.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov,* 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: February 28, 2008.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E8–4151 Filed 3–3–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Southtowns Connector/Buffalo Outer Harbor (STC/BOH) City of Buffalo, Erie County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on claims for judicial review of actions by FHWA and other federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, that includes a series of transportation access improvements centered around the New York Route 5 corridor along the Lake Erie waterfront in the City of Buffalo, City of Lackawanna, and Town of Hamburg in the State of New York, that is commonly referred to as the Southtowns Connector/Buffalo Outer Harbor (STC/BOH) project. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 2, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Kolb, P.E., Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127 or Alan E. Taylor, P.E., Regional Director, NYSDOT Region 5; 100 Seneca Street, Buffalo NY 14203, Telephone: (716) 847–3238.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA, and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of New York: Southtowns Connector/Buffalo Outer Harbor (STC/BOH) project in the City of Buffalo, City of Lackawanna, and Town of Hamburg, Erie County. The project will reconstruct/rehabilitate NY Route 5 and Fuhrmann Boulevard (while maintaining them as separate transportation facilities), reconstruct Ohio Street into a landscaped arterial, construct a new arterial called Tifft Street Arterial connecting I–190 with an improved interchange in the Seneca/Elk/Bailey area and traversing south to Tifft Street, east of the existing CSX railroad corridor and through the former LTV/Republic Steel site. The project will also include the construction of various sidewalks, and multi-use paths, and other landscape and aesthetic enhancements within the project limits. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on May 10, 2006 and in the FHWA Record of Decision (ROD) issued on January 31, 2007. The FEIS, ROD, and other project records are available by contacting the FHWA or the New York State Department of Transportation at the addresses provided above.

This notice applies to all Federal agency decisions related to the Southtowns Connector/Buffalo Outer Harbor (STC/BOH) project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act [42 U.S.C. 4321–4351].
2. Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
3. Clean Air Act [42 U.S.C. 7401–7671(q)].
4. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
5. Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536].
6. Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)].
7. Migratory Bird Treaty Act [16 U.S.C. 703–712].
8. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].
9. Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]
10. Farmland Protection Policy Act [7 U.S.C. 4201–4209].
11. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]
12. Land and Water Conservation Fund [16 U.S.C. 4601–4604].
13. Rivers and Harbors Act of 1899 [33 U.S.C. 401–406].
14. Executive Order 11990 Protection of Wetlands.
15. Executive Order 11988 Floodplain Management.
16. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: February 26, 2008.

Jeffrey W. Kolb,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. E8–4090 Filed 3–3–08; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant.

2. Extensive public comment under review.

3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.

4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on February 27, 2008.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application No.	Applicant	Reason for delay of completion	Estimated date
	Modification to Special Permits		
11579–M	Austin Powder Company, Cleveland, OR	3, 4	03–31–2008
10964–M	Kidde Aerospace & Defense, Wilson, NC	4	03–31–2008
13173–M	Dynetek Industries Ltd., Calgary Alberta, Canada	1	03–31–2008
	New Special Permit Applications		
14385–N	Kansas City Southern Railway Company, Kansas City, MO	4	03–31–2008
14566–N	Nantong CIMCTank Equipment Co. Ltd., Nantong City	3	03–31–2008
14576–N	Structural Composites Industries(SCI), Pomona, CA	1	03–31–2008
14572–N	WEW Westerwaelder Eisenwerk, Weitefeld Germany	3	03–31–2008
14549–N	Greif, Inc., Delaware, OR	3,4	03–31–2008
14402–N	Lincoln Composites, Lincoln, NE	3,4	03–31–2008

[FR Doc. E8–4111 Filed 3–3–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–RSPA–2004–19856]

Pipeline Safety: Issues Related to Mechanical Couplings Used in Natural Gas Distribution Systems

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: Recent events concerning failures of mechanical couplings and related appurtenances have raised concerns about safety in natural gas distribution systems. This notice updates information provided in Advisory Bulletin ADB–86–02 and advises owners and operators of gas pipelines to consider the potential failure modes for mechanical couplings used for joining and pressure sealing two pipes together. Failures can occur when there is inadequate restraint for the potential stresses on the two pipes, when the couplings are incorrectly installed or supported, or when the coupling components such as elastomers degrade over time. In addition, inadequate leak surveys which fail to identify leaks requiring immediate repair can lead to more serious incidents. This notice urges operators to review their procedures for using mechanical couplings and ensure coupling design, installation procedures, leak survey procedures, and personnel qualifications meet Federal requirements. Operators should work with Federal and State pipeline safety representatives, manufacturers, and industry partners to determine how best to resolve potential issues in their respective state or region. Documented repair or replacement programs may prove beneficial to all stakeholders involved.

FOR FURTHER INFORMATION CONTACT: Richard Sanders at (405) 954–7214, or by e-mail at *richard.sanders@dot.gov;* or Max Kieba at (202) 493–0595, or by e-mail at *max.kieba@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Mechanical couplings are fittings used for joining and pressure sealing two pipes together. Other methods of joining pipe include welding for steel and heat fusion for plastic. There have been improvements in materials and manufacturing methods over the years, but the basic design concept has not changed. Most couplings rely on elastomers and compression as sealing mechanisms. Couplings appear in a variety of configurations: Straight or inline couplings, elbows (45 or 90 degree), tees, reducing couplings (for joining pipes of different diameters), and couplings integrated with risers. A variety of gaskets and sleeves also exist. Properly installed and supported, couplings successfully connect steel, cast iron, copper, and plastic pipes. However, there is also a history of significant incidents related to coupling failures.

Advisory Bulletin ADB–86–02, issued February 26, 1986, informed natural gas pipeline operators to review procedures for using mechanical couplings and ensure coupling design, procedures, and personnel qualifications meet 49 CFR part 192 requirements. ADB–86–02 is posted on PHMSA's Web site and in Docket ID PHMSA–RSPA–2004–19856. The bulletin discussed pipeline failures that had been attributed to temperature-related contraction of the plastic pipe and the inadequate restraint capabilities of mechanical couplings.

Additionally, the National Transportation Safety Board (NTSB) issued a Pipeline Accident Report titled ''National Fuel Gas Company, Natural Gas Explosion and Fire, Sharpsville, Pennsylvania, February 22, 1985'' (NTSB/PAR–85/02). The factors involved in the Sharpsville incident were similar to those of several other incidents reported to PHMSA's Office of Pipeline Safety. As documented in the NTSB report, the cyclic effects of temperature-related contraction and expansion on plastic pipe in an improperly designed mechanical joint can be cumulative and lead to a failure even after several years of satisfactory service.

A number of incidents have occurred since issuance of ADB–86–02. PHMSA searched 3,417 gas distribution incident reports submitted to the agency since 1984, and identified 274 incidents that could potentially include coupling or fitting failures. After closer examination of the incident detail, PHMSA determined 148 of those incidents more reliably appear to be coupling or fitting failures on steel or plastic pipe. Although this accounts for only four to eight percent of all distribution incidents reported to PHMSA, the significant incidents within that data, as well as the potential for additional significant incidents, should not be ignored. Significant incidents include the following: a failure in Buffalo, Minnesota on February 19, 2004 that resulted in significant property damage; a failure in Ramsey, Minnesota on December 28, 2004 that resulted in three fatalities and one serious injury; and, a failure in Wylie, Texas on October 16, 2006 that resulted in two fatalities.

It is important to note that this data only includes incidents that were reportable to PHMSA. These numbers could be much greater if they included incidents that were reported at the State level.

In addition to these incidents, a number of other issues have been cited:

- In 1993, the New York State Public Service Commission (NY PSC) concluded an investigation concerning the increased incidence of leaks attributed to gaskets and gas quality in a coupled steel natural gas distribution system on Long Island.
- In 2005, Washington Gas Company issued a report on the increased incidence of natural gas leaks attributed to gaskets and gas quality on mechanically coupled steel pipe in a major portion of its distribution system.
- In 2005, the Public Utilities Commission of Ohio (PUCO) opened a statewide investigation due to a series of natural gas incidents reported to PUCO by local distribution companies involving risers, the vertical portions of the service lines that connect the distribution systems to customers' meters. In addition to four reportable incidents, a number of ''non-incident'' riser failures were also reported to the staff. The PUCO opened a case to examine riser types, reviewing installation and overall performance because of the potential risk posed by risers as links between the gas distribution service lines and meters, located near or within a customer's premises.
- In addition to the 2004 incidents in Minnesota already discussed, two other incidents occurred in the State. After the first incident, Minnesota's Office of Pipeline Safety began to review the couplings installed in the system in question. The second incident occurred while the study was being conducted.

Between 1980 and 2007, seven incidents occurred in Texas. These are outlined in a February 2008 Railroad Commission of Texas report titled ''Study Report on Compression Type Couplings.'' (*http://www.rrc.state.tx.us/divisions/gs/pls/TXcouplingrpt.pdf*)

These incidents involve a variety of types and sections of couplings or risers. For example, the issues surrounding the Ohio couplings were slightly different than the Texas couplings. Both were related to risers, but the Ohio issues involved the compression mechanisms located aboveground on the risers that connect meter settings to underground service lines. The couplings in Texas have been located on the ends of service risers where service lines connect to risers. While some incidents in question were reportable to PHMSA and investigated by PHMSA, those that were not were investigated by the relevant State pipeline safety agency. This notice does not focus on a particular State, operator, or type of coupling. Rather, it intends to provide generally applicable advice on incidents affecting multiple stakeholders and systems throughout the country.

Although a number of variables exist, the safety problem appears to involve two predominant failure modes. First, in the cases involving pullout of pipe, often plastic, from compression couplings, an additional and perhaps unique factor produced the pullout forces. These additional factors could include cyclic fatigue from changing of the seasons (especially in northern climates), or soil shifting by other means (ground movement from earthquakes or after heavy rains). Improper installation (most couplings currently come with product warnings) or old age (parts of the coupling deteriorating) could also have contributed to the pullout. Some studies found couplings that were installed with components that differed from the original manufacturer specifications, modified prior to installation, or missing parts entirely. As another example of incorrect application, the coupling involved in the Ramsey, Minnesota incident was designed to be used on steel pipe, not plastic, and had a service tee welded to it contrary to manufacturer's recommendations. The common factor in all incidents involving pullout is that the compression fitting did not have adequate restraint to assure safety under service conditions. In some cases, the coupling failed after many years of successful service.

The second failure mode involves leakage through the sealing surface between the coupling and the pipe. This occurred when the integrity of long-term viscous and elastic effects of the seals degraded which eventually caused a leak path to develop. In some cases, a change in the gas quality in the distribution system may have contributed to the failure.

Other contributing factors can also lead to incidents. These factors include leak surveys conducted in conditions that prevent gas from properly migrating to the surface, such as after heavy rains or certain soil and surface features. Some incidents indicated leak surveys involving equipment not calibrated properly or not appropriate for the intended use, or personnel not sufficiently trained. If an operator is doing proper leak surveys at regular intervals, an operator can usually detect a leak early, fix the source of the leak, and prevent an incident. There have, however, been cases where a leak survey, using properly calibrated equipment showing no problems, was followed by an incident involving sudden pullout only weeks later.

Follow-up has already occurred with some of the incidents mentioned in this bulletin:

- The NY PSC and the operator agreed to a replacement program involving approximately 45,000 natural gas service lines equipped with couplings.
- In Ohio, nearly 500,000 risers were identified by the PUCO's study as prone to failure. Currently, the PUCO is working with the operators who have these risers and the Ohio Consumers' Counsel to set up replacement schedules and address costs.
- In May 2005, Minnesota's Office of Pipeline Safety issued a compliance order to an operator to replace service lines installed prior to January 1, 1984, or visually inspect the entire service line to verify it contains only mechanical fittings that comply with 49 CFR 192.283(b). Any mechanical fittings identified that did not meet the requirements were required to be replaced.
- The Railroad Commission of Texas has required operators to replace, within a 2-year period, 97,000 remaining old mechanical couplings that have been in service for some 28 to 30 years. In addition, the Railroad Commission of Texas has adopted mandatory replacement programs in an effort to remove compression couplings found leaking on both steel and plastic pipe that are susceptible to pullout.

A number of other studies, tests, and repair or replacement programs, some of them voluntary, have been conducted in other States.

II. Advisory Bulletin (ADB–08–02)

To: All Gas Distribution Operators.

Subject: Identifying Issues with Mechanical Coupling That Could Lead to Failure.

Advisory: Due to variables related to age of couplings, specific procedures and installation practices, and conditions specific to certain regions of the country, it is difficult to cite common criteria affecting all failures that operators should address. However, PHMSA advises operators of gas distribution pipelines using mechanical couplings to do the following to ensure compliance with 49 CFR part 192:

(1) Review procedures for using mechanical couplings, including the coupling design and installation and ensure that they meet manufacturer's recommendations;

(2) Review leak survey procedures to ensure that leak surveys are properly conducted, taking into account other contributing factors (i.e., weather conditions, calibration); and,

(3) Review personnel qualifications to ensure they address leak surveys sufficiently.

PHMSA also advises operators of gas distribution pipelines using mechanical couplings to consider taking the following measures to reduce the risk of failures of mechanical couplings:

(4) Use Category 1 fittings only if mechanical couplings are used on pipe sizes ½″ CTS (Copper Tube Size) to 2″ IPS (Iron Pipe Size). Per ASTM D2513–99 titled ''Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings,'' Category 1 is a mechanical joint design that provides a seal plus a resistance to a force on the pipe end equal to or greater than that which will cause a permanent deformation of the pipe. At this time there is insufficient data to indicate there are issues involving fittings for larger diameter pipe. PHMSA will revisit if such issues do arise with larger diameter pipe.

(5) Improve recordkeeping on specific couplings that exist, i.e., their type, installation date, maintenance schedule, and any failures encountered, to help identify a trend of problems that may occur with a specific coupling or type of installation.

(6) Consider whether to adopt a full replacement program if there are too many unknowns related to couplings in service.

(7) Work with Federal and State pipeline safety representatives, manufacturers, and industry partners to determine how best to resolve potential issues in their respective state or region.

Documented repair and replacement programs may prove beneficial to all stakeholders involved. If operators are unsure of the appropriate representative, contact the individual(s) listed in this advisory bulletin for further information.

Issued in Washington, DC, on February 28, 2008.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E8–4155 Filed 3–3–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Entities Pursuant to Executive Order 13448

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of two newly-designated entities whose property and interests in property are blocked pursuant to Executive Order 13448 of October 18, 2007, ''Blocking Property and Prohibiting Certain Transactions Related to Burma.''

DATES: The designation by the Director of OFAC of two entities identified in this notice, pursuant to Executive Orders 13448, is effective February 25, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

Information about these designations and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov.ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On October 18, 2007, the President signed Executive Order 13448 (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). In the Order, the President took additional steps with respect to, and expanded, the national emergency declared in Executive Order 13047 of May 20, 1997, to address the Government of Burma's continued repression of the democratic opposition. The President identified twelve individuals and entities as subject to the economic sanctions in the Annex to the Order.

Section 1 of the Order blocks, with certain exceptions, all property and

interests in property that are in, or hereafter come within, the United States, or with the possession or control of United States persons, of the persons listed in the Annex, as well as those persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to satisfy any of the criteria set forth in subparagraphs (b)(i)–(b)(vi) of section 1. On February 25, 2008, the Director of OFAC exercised the Secretary of the Treasury's authority to designate, pursuant to one or more of the criteria set forth in section 1, subparagraphs (b)(i)–(b)(vi) of the Order, the following two entities, whose names have been added to the list of Specially Designated Nationals and whose property and interests in property are blocked pursuant to Executive Order 13448:

1. AUREUM PALACE HOTELS AND RESORTS (a.k.a. AUREUEM PALACE HOTEL AND RESPORT (BAGAN); a.k.a. AUREUEM PALACE HOTEL AND RESORT (NGAPALI); a.k.a. AUREUM PALACE HOTEL AND RESORT (NGWE SAUNG); a.k.a. AUREUM PALACE HOTEL AND RESORT GROUP CO. LTD.; a.k.a. AUREUM PALACE HOTEL RESORT; a.k.a. AUREUM PALACE RESORTS; a.k.a. AUREUM PALACE RESORTS AND SPA), No. 41 Shwe Taung Gyar Street, Bahan Township, Yangon, Burma; Thandwe, Rakhine, Burma [BURMA]

2. MYANMAR TREASURE RESORTS (a.k.a. MYANMAR TREASURE BEACH RESORT; a.k.a. MYANMAR TREASURE BEACH RESORTS; a.k.a. MYANMAR TREASURE RESORT (BAGAN); a.k.a., MYANMAR TREASURE RESORT (PATHEIN); a.k.a. ''MYANMAR TREASURE RESORT II''), No. 41 Shwe Taung Gyar Street, Bahan Township, Yangon, Burma; No 56 Shwe Taung Gyar Road, Golden Valley, Bahan Township, Yangon, Burma [BURMA]

Dated: February 25, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 08–891 Filed 3–3–08; 8:45 am]

BILLING CODE 4811–42–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Individuals and Entities Pursuant to Executive Order 13448

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of three newly-designated individuals and four entities whose property and interests in property are blocked pursuant to Executive Order 13448 of October 18, 2007, ''Blocking Property and Prohibiting Certain Transactions Related to Burma.''

DATES: The designation by the Director of OFAC of three individuals and four entities identified in this notice, pursuant to Executive Orders 13448, is effective February 25, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW. (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

Information about these designations and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On October 18, 2007, the President signed Executive Order 13448 (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). In the Order, the President took additional steps with respect to, and expanded, the national emergency declared in Executive Order 13047 of May 20, 1997, to address the Government of Burma's continued repression of the democratic opposition. The President identified twelve individuals and entities as subject to the economic sanctions in the Annex to the Order.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in, or hereafter come within, the United States, or within the possession or control of United States persons, of the persons listed in the Annex, as well as those persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to satisfy any of the criteria set forth in subparagraphs (b)(i)–(b)(vi) of section 1. On February 25, 2008, the Director of OFAC exercised the Secretary of the Treasury's authority to designate, pursuant to one or more of the criteria set forth in section 1, subparagraphs (b)(i)–(b)(vi) of the Order, the following three individuals and four entities, whose names have been added to the list of Specially Designated Nationals and whose property and interests in property are blocked pursuant to Executive Order 13448:

Individuals

1. LAW, Steven (a.k.a. CHUNG, Lo Ping; a.k.a. HALIM, Abdul; a.k.a. LAW, Stephen; a.k.a. LO, Ping Han; a.k.a. LO, Ping Hau; a.k.a. LO, Ping Zhong; a.k.a. LO, Steven; a.k.a. NAING, Htun Myint; a.k.a. NAING, Tun Myint; a.k.a. NAING, U Myint), 8A Jalan Teliti, Singapore, Singapore; 3 Shenton Way, #10–01 Shenton House, Singapore 068805, Singapore; No. 124 Insein Road, Ward (9), Hlaing Township, Rangoon, Burma; 61–62 Bahosi Development Housing, Wadan St., Lanmadaw Township, Rangoon, Burma; 330 Strand Rd., Latha Township, Rangoon, Burma; DOB 16 May 1958; alt. DOB 27 Aug 1960; POB Lashio, Burma; citizen Burma; Passport 937174 (Burma) (individual) [BURMA].

2. LO, Hsin Han (a.k.a. LAW, Hsit-han; a.k.a. LO, Hsing Han; a.k.a. LO, Hsing-han), 60–61 Strand Rd., Latha Township, Rangoon, Burma; 20–23 Masoeyein Kyang St., Mayangone, Rangoon, Burma; 20B Massoeyein St., 9 Mile, Rangoon, Burma, Burma; 330 Strand Rd, Latha Township, Rangoon, Burma; 20 Wingabar Rd, Rangoon, Burma; 36 19th St., Lower Blk, Latha Township, Rangoon, Burma; 47 Latha St., Latha Township, Rangoon, Burma; 152 Sule Pagoda Rd, Rangoon, Burma; 126A Damazedi Rd, Bahan Township, Rangoon, Burma; DOB 1938; alt. DOB 1935 (individual) [BURMA].

3. NG, Sor Hong (a.k.a. LAW, Cecilia; a.k.a. LO, Cecilia; a.k.a. NG, Cecilia; a.k.a. NG, Cecilia), 3 Shenton Way, #10–01 Shenton House, Singapore 068805, Singapore; 150 Prince Charles Crescent, #18–03, Singapore 159012, Singapore; DOB 1958; citizen Singapore; Identification Number S1481823E (Singapore); Chief Executive, Managing Director, and Owner, Golden Aaron Pte. Ltd., Singapore; Director and Owner, G A Ardmore Pte. Ltd., Singapore; Chief Executive, Director and Owner, G A Capital Pte. Ltd., Singapore; Director and Owner, G A Foodstuffs Pte. Ltd., Singapore; Chief Executive, Director and Owner, G A Land Pte. Ltd., Singapore; Director and Owner, G A Resort Pte. Ltd., Singapore; Chief Executive, Director and Owner, G A Sentosa Pte. Ltd., Singapore; Chief Executive, Director and Owner, G A Treasure Pte. Ltd., Singapore; Director and Owner, G A Whitehouse Pte. Ltd., Singapore; Chief Executive, Manager, and Owner, S H Ng Trading Pte. Ltd., Singapore (individual) [BURMA].

Entities

1. ASIA LIGHT CO. LTD., 15/19 Kunjan Rd., S Aung San Std, Rangoon, Burma; Mingalar Taung Nyunt Tower, 6 Upper Pansoden Street, Aung San Stadium Eastern Wing, Rangoon, Burma [BURMA].

2. ASIA WORLD CO. LTD. (a.k.a. ASIA WORLD), 61–62 Bahosi Development Housing, Wadan St., Lanmadaw Township, Rangoon, Burma [BURMA].

3. ASIA WORLD INDUSTRIES LTD., No. 21/22 Upper Pansodan St., Aung San Stadium (East Wing), Mingalar Taung Nyunt, Rangoon, Burma [BURMA].

4. ASIA WORLD PORT MANAGEMENT CO. LTD (a.k.a. ASIA WORLD PORT MANAGEMENT; a.k.a. ''PORT MANAGEMENT CO. LTD.''), 61–62 Wartan St., Bahosi Yeiktha, Rangoon, Burma [BURMA].

Dated: February 25, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–3835 Filed 2–28–08; 8:45 am]

BILLING CODE 4811–42–P

Federal Register

Tuesday,
March 4, 2008

Part II

Consumer Product Safety Commission

16 CFR Part 1634

Standard for the Flammability of Residential Upholstered Furniture; Proposed Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1634

Standard for the Flammability of Residential Upholstered Furniture

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Consumer Product Safety Commission (''Commission'' or ''CPSC'') is proposing flammability standards for residential upholstered furniture under the Flammable Fabrics Act (''FFA''). The proposal would establish performance requirements and certification and labeling requirements for upholstered furniture. Manufacturers of upholstered furniture would choose one of two possible methods of compliance: They could use cover materials that are sufficiently smolder resistant to meet a cigarette ignition performance test; or they could place fire barriers that meet smoldering and open flame resistance tests between the cover fabric and interior filling materials. Manufacturers of upholstered furniture would be required to certify compliance with the standard and to comply with certain recordkeeping requirements as specified in the proposal.

DATES: Comments in response to this document must be received by the Commission not later than May 19, 2008.

Comments on elements of the proposed rule that, if issued in final form would constitute collection of information requirements under the Paperwork Reduction Act, may be filed with the Office of Management and Budget (''OMB'') and with the Commission. Comments will be received by OMB until May 5, 2008.

ADDRESSES: Comments should be filed by e-mail to *cpsc-os@cpsc.gov.* Comments also may be filed by telefacsimile to (301) 504–0127 or mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–7530. Comments should be captioned ''Upholstered Furniture NPR.''

Comments to OMB should be directed to the Desk Officer for the Consumer Product Safety Commission, Office of Information and Regulatory Affairs, OMB, Washington, DC 20503. The Commission asks commenters to provide copies of such comments to the Commission's Office of the Secretary, with a caption or cover letter identifying the materials as comments submitted to OMB on the proposed collection of information requirements for the proposed upholstered furniture flammability standard.

The public may also request an opportunity to present comments orally. Such requests should be submitted to the Office of the Secretary of the Commission by e-mail, mail, fax or in person at the addresses or phone numbers listed above for the CPSC.

FOR FURTHER INFORMATION CONTACT: Dale R. Ray, Project Manager, Directorate for Economic Analysis, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7704.

SUPPLEMENTARY INFORMATION:

A. Background

Regulatory/technical activity. In 1993 the National Association of State Fire Marshals (''NASFM'') petitioned the Commission to issue regulations under the FFA addressing upholstered furniture fire risks. NASFM requested that the Commission adopt three existing state of California standards.

The Commission granted the petition in part, and issued an advance notice of proposed rulemaking (''ANPR'') on June 15, 1994 on the specific risk of small open flame-ignited fires. 59 FR 30,735 (1994). The Commission denied the petition with respect to large open flame-ignited fires, and deferred action on the petition with respect to cigarette-ignited fires pending a CPSC staff evaluation of: (1) The level of voluntary conformance to existing voluntary industry guidelines, and (2) the overall level of cigarette ignition resistance among products on the market.

Following issuance of the 1994 ANPR, CPSC staff developed a draft performance standard and a test method to evaluate the small open flame performance of upholstered furniture. In October 1997, the staff forwarded a briefing package to the Commission concluding that a small open flame standard was feasible and could effectively reduce the risk to consumers, including both small open flame and cigarette ignitions. The staff recommended that the Commission defer action until the agency could gather additional scientific information to ensure that flame retardant (''FR'') upholstery fabric treatments that manufacturers might use would not result in adverse health effects. The staff recommended that the Commission defer action on the cigarette ignition portion of the 1993 NASFM petition pending a decision on open flame ignition. On October 5, 2001, NASFM withdrew the portion of the petition seeking Commission action with respect to cigarette-ignited fires.

In July of 2003 the CPSC staff recommended that the Commission issue an ANPR to expand the upholstered furniture proceeding to address ignition of upholstered furniture by both small open flames and by smoldering cigarettes. The Commission accepted the staff's recommendation, and the ANPR was published on October 23, 2003. 68 FR 60,619. The 2003 ANPR sought comment on issues relating to the kinds of standard provisions that might best address the upholstered furniture fire risk in its entirety.

The Commission received 13 written comments during the 60-day formal comment period following publication of the ANPR. Interested parties subsequently provided additional written submissions in the form of letters, position statements or presentations of technical data at meetings. A detailed discussion of significant comments received is provided in Section G of this preamble. In October 2004, the staff held a public meeting to present the direction of what would become the staff's 2005 draft standard. The staff analyzed comments received at that meeting as well. The proposed standard takes account of that analysis. Staff received comments on its 2005 draft standard, continued its research and analysis and developed a revised, 2007 draft proposal that focused primarily on preventing smoldering ignitions and reducing the need for flame retardant chemicals.[1] This notice presents the 2007 draft as the Commission's proposed standard.[2]

Overview of the proposed standard. The proposed standard establishes two possible approaches. Upholstered furniture can meet the proposed standard by having either (1) upholstery cover material that complies with the prescribed smoldering ignition

[1] The Commission staff briefing package discussing this proposal, Briefing Package: Regulatory Alternatives for Upholstered Furniture Flammability, November 2007, (the ''Staff Briefing Package'') is available on the Internet at: *http://www.cpsc.gov/library/foia/foia08/brief/briefing.html*. Copies may also be requested from the Commission's Office of the Secretary at the address shown above.

[2] Acting Chairman Nancy Nord and Commissioner Thomas H. Moore issued statements which are available from the Commission's Office of the Secretary (see **ADDRESSES** section of this notice) or from the Commission's Web site, *http://www.cpsc.gov/pr/statements.html*.

resistance test (referred to as ''Type I'' furniture) or (2) an interior fire barrier that complies with specified smoldering and small open flame ignition resistance tests (''Type II'' furniture). No requirements are prescribed for filling materials. The standard would become effective one year after issued in final form and would apply to upholstered furniture manufactured or imported on or after that date.

The performance tests prescribed in the proposed standard are conducted with the tested material installed in mockups that simulate the intersection of the seating area of an item of upholstered furniture. In addition to the material under test, the mockup is assembled using standardized upholstery test materials as defined in the proposed standard.

Manufacturers (including importers) of upholstered furniture would be required to certify that the article of upholstered furniture complies with the proposed standard and to maintain records demonstrating compliance with the applicable portions of the proposed standard. Upholstered furniture subject to the proposed standard would be required to be labeled with information identifying the manufacturer, the date of manufacture, the item and type of furniture, and a statement certifying that the article complies with applicable requirements of the standard.

B. Statutory Authority

This proceeding is conducted pursuant to Section 4 of the Flammable Fabrics Act (''FFA''), which authorizes the Commission to initiate proceedings for a flammability standard when it finds that such a standard is ''needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage.'' 15 U.S.C. 1193(a).

Section 4 also sets forth the process by which the Commission may issue a flammability standard. As required in section 4(g), the Commission has issued an ANPR. 68 FR 60629. 15 U.S.C. 1193(g). The Commission has reviewed the comments submitted in response to the ANPR and now is issuing a notice of proposed rulemaking (''NPR'') containing the text of the proposed rule along with alternatives the Commission has considered and a preliminary regulatory analysis. 15 U.S.C. 1193(i). The Commission will consider comments provided in response to the NPR and decide whether to issue a final rule along with a final regulatory analysis. *Id.* 1193(j). The FFA also requires that when issuing a standard or regulation the Commission must provide an opportunity for interested persons to present their views orally. *Id.* 1193(d).

The Commission cannot issue a final rule unless it makes certain findings and includes these in the regulation. The Commission must find: (1) If an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) that benefits expected from the regulation bear a reasonable relationship to its costs; and (3) that the regulation imposes the least burdensome alternative that would adequately reduce the risk of injury. 15 U.S.C. 1193(j)(2). In addition, the Commission must find that the standard (1) is needed to adequately protect the public against the risk of the occurrence of fire leading to death, injury or significant property damage, (2) is reasonable, technologically practicable, and appropriate, (3) is limited to fabrics, related materials or products which present unreasonable risks, and (4) is stated in objective terms. *Id.* 1193(b).

C. The Product

The proposed standard applies to residential upholstered furniture. The proposal specifically requires testing of cover fabrics and, alternatively, barrier materials if they are used as a means of complying with the proposed standard. Upholstered furniture is defined for purposes of the proposed standard to include articles of interior seating furnishing intended for indoor use in a home or other residential occupancy that: (1) Consist in whole or in part of resilient cushioning materials (such as foam, batting, or related materials) covered by fabric or related materials; and (2) are constructed with a contiguous upholstered seat and back or arms. Included within the definition are products that are intended or promoted for indoor residential use for sitting or reclining upon, such as: Chairs, sofas, motion furniture, sleep sofas, home office furniture customarily offered for sale through retailers or otherwise available for residential use, and upholstered furniture intended for use in dormitories or other residential occupancies. Items excluded from the definition are: Furniture, such as patio chairs, intended solely for outdoor use; furniture without contiguous upholstered seating and backs and/or arm surfaces, such as ottomans, pillows or pads that are not sold with the article of furniture; commercial or industrial furniture not offered for sale through retailers or not otherwise available for residential use; furniture intended or sold solely for use in hotels and other short-term lodging and hospitality establishments; futons, flip chairs, the mattress portions of sleep sofas, and non-furniture infant or juvenile products such as walkers, strollers, high chairs or pillows.

Commission staff estimates that the proposed standard would affect more than 1,600 manufacturers and importers of upholstered furniture and the 100–200 textile manufacturers that derive a significant share of their revenues from household furniture fabrics. The staff estimates that the average useful life of upholstered furniture ranges from 15 to 17 years. Assuming that the expected life of a piece of upholstered furniture is about 16 years, the average number of upholstered furniture items in household use during 2002–2004 was about 447 million pieces. Upholstered furniture products and manufacturers are discussed in greater detail in section H, *Preliminary Regulatory Analysis*, of this preamble.

The top four companies accounted for nearly 35 percent of the total value of household upholstered furniture shipments in 2002; the 50 largest companies accounted for about 67 percent. The industry also includes many small companies. The staff estimates that nearly all of the affected firms (over 97 percent) would be classified as small businesses under Small Business Administration guidelines. The staff's initial analysis of the potential impact of the proposed standard on such ''small entities'' is provided in section I., *Initial Regulatory Flexibility Analysis*, of this preamble.

As discussed in section D of this preamble, the majority of deaths and injuries resulting from fires involving upholstered furniture were started by smoldering ignition sources (such as cigarettes). The staff's test data show that furniture covered with predominantly cellulosic fabrics (such as cotton and rayon) is much more likely to be involved in cigarette-ignited fires than furniture covered with predominantly thermoplastic fabrics (such as polyester, polyolefin, and nylon). The proposed standard focuses primarily on reducing deaths and injuries from smoldering ignited fires. Staff estimates that about 14 percent of currently-produced furniture items are likely to fail the proposed standard's smoldering ignition test for cover fabrics. These would primarily be items constructed with certain predominantly cellulosic fabrics; staff believes most of these fabrics could be modified to meet the proposed standard. Staff anticipates that most manufacturers are likely to bring these furniture items into

compliance by modifying the physical characteristics of the cover fabrics rather than by using flame retardant (FR) fabric treatments. Alternatively, manufacturers would have the option to meet the proposed standard by using barrier materials that pass open flame and smoldering ignition tests rather than changing the cover fabric.

D. Risk of Injury

Annual estimates of national fires and fire losses involving ignition of upholstered furniture are based on data from the U.S. Fire Administration's National Fire Incident Reporting System (''NFIRS'') and the National Fire Protection Administration's (''NFPA'') annual survey of fire departments.

National fire loss estimates for 2002–2004 indicated that upholstered furniture was the first item to ignite in an average 7,800 residential fires attended by the fire service annually during that period. These fires resulted in an average of 540 deaths, 870 injuries and $250 million in property loss each year.

Of these fires, the staff considers an estimated 3,500 fires, 280 deaths, 500 injuries, and $112 million property loss annually to be addressable by the proposed standard. Addressable here means the incidents were of a type that would be affected by the proposed standard (i.e., a fire that ignited upholstered furniture and that had a smoking material or small open flame heat source). Approximately 90% of estimated deaths, 65% of estimated injuries and 59% of property damage resulted from ignition by smoking materials, almost always cigarettes. The remaining addressable fires were started by small open flame sources. Among the addressable casualties, smoking materials accounted for about 260 deaths and 320 injuries annually. Small open flame fires accounted for about 30 deaths and 170 injuries annually.[3]

E. Other Upholstered Furniture Flammability Standards

1. California Regulatory Activity

California Technical Bulletin 117 (''TB–117''), the mandatory regulation for all upholstered furniture sold in that state, contains both smoldering and small open flame resistance performance requirements. Complying upholstered furniture is generally similar to furniture sold in other states, except that California furniture is typically made with FR resilient foam filling materials. In early 2002, the California Bureau of Home Furnishings and Thermal Insulation (BHFTI) released a draft revision of TB–117. This draft revision contained upgraded performance requirements for small open flame ignition resistance of filling materials, and a cover material test similar to that developed by the Commission staff in its 2001 draft small open flame standard. The TB–117 smoldering resistance provisions were not changed.

The California BHFTI has not proposed amendments to TB–117 to incorporate the 2002 draft revision. The BHFTI's comment on the Commission's October 23, 2003 ANPR expressed support for a uniform national standard. BHFTI recommended that the Commission consider adopting appropriate elements of the 2002 draft revised TB–117 into a proposed Commission rule. The proposed standard contains some requirements similar to provisions of TB–117.

2. United Kingdom Regulations

The U.K. Department of Trade and Industry (''DTI'') enforces the U.K. Furniture and Furnishings (Flammability) Regulations, issued in 1990. These regulations contain smoldering and open flame resistance requirements for residential upholstered furniture based on test methods in British Standard BS 5852. The CPSC proposed standard's fire barrier open flame test uses the apparatus and ignition source from the U.K. regulations.

3. Voluntary Standards Activity

Since the Commission's original ANPR on upholstered furniture was published in 1994, industry groups have been encouraged to develop voluntary flammability requirements through a recognized standards organization. The Upholstered Furniture Action Council (''UFAC'') voluntary industry program of cigarette ignition tests developed in the 1970s is embodied in ASTM E–1353 and other voluntary test methods. Commission staff estimates voluntary UFAC conformance at about 90% of furniture production. The UFAC voluntary program does not address small open flame ignitions. Aspects of the UFAC cigarette ignition resistance test methods, California BHF Technical Bulletins (TB) 116, 117, and 133, and British Standard BS–5852 have been adopted by various consensus voluntary standards organizations and industry groups, including ASTM International, the International Standards Organization, the National Fire Protection Association and the Business and Institutional Furniture Manufacturers of America, and have also been incorporated into some state and local fire codes. Some industry groups have suggested that the Commission should adopt the UFAC program as a proposed rule. As discussed in section G.1 of this preamble, the Commission concludes that mandating the UFAC guidelines would have little effect on reducing deaths and injuries related to upholstered furniture fires.

F. The Proposed Standard

In developing the proposed flammability standard to address ignitions of residential upholstered furniture, the Commission considered the available hazard information, existing standards development research together with the latest CPSC laboratory data, and technical information developed by other organizations. Economic, health and environmental factors were also considered.

1. Scope

The proposed standard contains flammability performance requirements for most residential upholstered furniture. The proposed standard applies to:

- Residential seating products intended for indoor use and constructed with contiguous upholstered seats and backs, such as chairs and sofas (including motion furniture and sleep sofas);
- Some home office furniture sold through retailers or otherwise available for household use; and
- Upholstered furniture used in dormitories or other residential occupancies.

The proposed standard does not apply to:

- Outdoor furniture, such as patio chairs;
- Articles without contiguous upholstered seating surfaces, such as ottomans, decorative pillows or pads, and many office chairs and dining chairs;
- Commercial or industrial furniture not intended or sold for household use;
- Furniture intended or sold solely for use in hotels and other temporary lodging and hospitality establishments;
- Futons, flip chairs, and the mattress components of sleep sofas; and
- Non-furniture juvenile products such as walkers, strollers, high chairs and pillows.

2. General Requirements

The proposed standard addresses resistance to ignition and limited fire growth by means of performance tests for cover fabrics and, alternatively, for

[3] Numbers do not add up to totals due to rounding.

barriers. The principal performance requirements of the proposed standard are intended to reduce the risk of fire from smoldering ignition. If barriers are chosen as the means of compliance, they must meet both small open flame and smoldering resistance requirements. The proposal adapts elements and variations of existing standards, including California Technical Bulletin 117, ASTM E–1353 (tests from the UFAC voluntary industry guidelines) and United Kingdom regulations (based on British Standard BS–5852).

The upholstered furniture tests are conducted using seating mockups of fabric and filling materials. The goal is to reduce the smolder propensity of cover materials and limit the mass loss from combustion (smoldering, melting, or flaming) of the mockup's interior filling materials. Pass/fail criteria are based on maximum acceptable combustion time and mass loss percentages within a 45 minute test period.

3. Cover Fabric Smoldering Resistance Test

In this test, fabrics are tested in combination with a standard polyurethane foam substrate. A lighted cigarette is placed in the seat/back crevice of the mockup and is allowed to burn its entire length. The mockup must not continue to smolder at the end of the 45 minute test or transition to flaming at any time during the test, and the foam substrate must not exceed the mass loss limit of 10%. Ten initial specimens are tested. If the 10 initial specimens meet these criteria, the cover fabric sample passes. If there is a failure in any one of the 10 initial specimens, the test must be repeated on an additional 20 specimens. At least 25 of the 30 specimens must meet the criteria.

4. Interior Fire Barrier Smoldering Resistance Test

In this test, the barrier is placed between a standard foam substrate and a standard cotton velvet cover fabric. A lighted cigarette is placed in the seat/back crevice of the mockup. The foam substrate must not exceed 1% mass loss by the end of the 45 minute test, and the mockup must not transition to open flaming at any time during the test. Ten initial specimens are tested. If all 10 initial specimens meet these criteria, the barrier sample passes. If any one of the ten fails, an additional 20 specimens are tested, and at least 25 of the 30 must meet the criteria.

5. Interior Fire Barrier Open Flame Resistance Test

The proposed standard also contains provisions for the open flame resistance of barriers. In addition to providing protection from small flame ignition, the open flame performance test contributes to the protection of materials from the progression of smoldering to flaming combustion.

In this test, the barrier is placed between a standard rayon cover fabric and standard foam substrate on a metal test frame. An open flame ignition source is applied to the seat/back crevice of the mockup. The mockup must not exceed 20% mass loss by the end of the 45 minute test. Again, 10 initial samples are tested. If there is a failure with any of the 10 specimens, an additional 20 specimens are tested, and at least 25 of the 30 must meet the criteria for the sample barrier to pass.

6. Administrative Requirements

In addition to flammability performance requirements, the proposed standard contains provisions relating to certification and recordkeeping, testing to support guaranties, and labeling of finished articles of upholstered furniture. These requirements are intended to help manufacturers, importers and suppliers ensure that their products comply, and to help the CPSC staff enforce the proposed performance standard. These provisions are contained in Subpart B of the proposed standard.

Under § 8 of the FFA, 15 U.S.C. 1197, producers of finished articles of upholstered furniture, i.e., manufacturers and importers, may rely on guaranties of compliance issued by material suppliers to avoid criminal prosecution in certain instances. However, manufacturers and importers are ultimately responsible under the proposal for compliance of the upholstered furniture products they produce and introduce into commerce. It is unlawful under the FFA to provide a false guaranty. While there are no specific sampling or production testing requirements in the proposed standard, the FFA requires that any guaranties be supported by reasonable and representative tests sufficient to establish that production units of materials meet the applicable tests.

The proposed standard requires that each finished article of upholstered furniture carry a permanent label: (1) Containing a statement certifying that it complies with the standard, identifying the ''Type'' of furniture (i.e., Type I or Type II); (2) identifying the manufacturer or importer; and (3) specifying the location and month and year of manufacture and model and lot number or other identifier applicable to the item. This information would be required to be separate from other label information. The label would help retailers and consumers identify products in the event of a recall or other corrective action.

G. Response to Comments on the ANPR and Subsequent Submissions

The Commission received 13 written comments during the 60-day formal comment period following publication of the ANPR in October 2003. Since that time, interested parties provided about 20 additional written submissions in the form of letters, position statements or technical presentations at public meetings. Further, the staff held or attended several public meetings with stakeholders to discuss issues of interest.

Many of the public comments addressed similar issues. These issues generally involved: (a) The scope, test methods and acceptance criteria of a possible proposed rule; (b) the potential benefits and costs of various alternatives; and (c) the potential use of flame retardant (FR) chemicals to comply with those alternatives. Some of the comments dealt specifically with the staff's 2001 and 2005 draft standards, options that contained more open flame performance requirements for upholstery materials than the proposed rule. A few of the comments dealt with the staff's 2007 draft proposal, which became the agency's proposed standard. The Commission considered all of the comments received since 2003 in developing the proposed rule.

1. Scope and Test Methods

Comment. Several industry, government and fire safety organizations provided comments on the general scope of a standard, mainly with respect to cigarette versus open flame ignition performance.

Under the 2003 ANPR, the staff developed multiple draft standards containing both smoldering and open flame requirements. The proposed rule places primary emphasis on smoldering ignition resistance, as a substantial majority of upholstered furniture-related deaths, injuries and property losses result from smoldering fires. Several furniture industry groups commented that the fire risk associated with open flame ignition has become so small that regulation in that area is unnecessary. They also commented that the science of open flame ignition behavior is so complex that substantial further research would be needed to support

any reasonable conclusions about the effectiveness and technical adequacy of any performance requirements. In addition, they opposed open flame ignition requirements on the basis that compliance costs would be unreasonably high. These groups recommended that the Commission proceed with rulemaking on smoldering ignition only, and that CPSC adopt the performance tests in the ASTM/UFAC voluntary guidelines in the proposed rule.

Other stakeholders, including representatives of fire safety organizations, state government and chemical industry groups, recommended that a federal rule contain both smoldering and open flame requirements, and stated that solutions are technically and economically feasible. Some commenters opposed any course that would reduce the current level of safety provided by the existing California regulation, Technical Bulletin (TB) 117. Other industry groups supported adoption of a smoldering standard and eventual consideration of open flame requirements in the future. The California Bureau of Home Furnishings and Thermal Insulation (BHFTI) recommended that CPSC consider adopting elements of the draft revised TB–117 published by BHFTI in 2002.

In 2004, an industry ''coalition'' of furniture producers and material suppliers developed a set of performance requirements for Commission consideration. The coalition proposal included: a small open flame test for cover fabrics, based on a modification of the Commission's Standard for the Flammability of Clothing Textiles (16 CFR Part 1610); smoldering and open flame tests for filling materials, based on the 2002 draft revision of California TB–117; an open flame test for fibrous (non-foam) ''cushion wraps,'' based on an existing U.K. regulation provision; ASTM/UFAC smoldering tests for cushion wraps; and an unspecified barrier test to be developed by CPSC. The staff evaluated the industry coalition proposal and questioned the effectiveness of some of the performance elements. Coalition members withdrew support for their proposal in 2005 as the CPSC staff was continuing its evaluation and considering other alternatives.

Response. The Commission recognizes that estimated residential upholstered furniture fire losses have declined over time, and that relatively few losses—e.g., about 10% of the addressable deaths—are attributable to open flame-ignited fires. Thus, relatively few open flame deaths and injuries could be averted, even under highly effective open flame requirements. The Commission notes, however, that large numbers of deaths and injuries remain. Since a substantial majority of these losses result from cigarette-ignited fires, the Commission agrees that a rule with primary emphasis on smoldering can have substantial safety benefits. Based on CPSC's laboratory research, the Commission also agrees that the ASTM/UFAC test method provides a useful basis for a standard, but does not agree that the ASTM/UFAC tests as implemented in the UFAC voluntary program would adequately achieve those benefits. While UFAC has contributed to fire safety by encouraging the use of smolder-resistant materials, the program allows the use of smolder-prone cover fabrics with polyurethane foam, and allows highly smolder-prone fabrics in combination with more smolder-resistant materials (e.g., polyester batting) underneath. These conforming combinations are not always adequate to prevent fire growth from smoldering ignitions.

CPSC laboratory testing demonstrated that smolder-prone fabrics can defeat the inherent smolder resistance of polyester batting, and that furniture mockup assemblies with highly smolder-prone fabrics can transition from smoldering to flaming combustion over time. Further, some lower-priced furniture may use UFAC-conforming but smolder-prone fabrics without smolder resistant batting. In addition, the UFAC tests may not be adequate to characterize the smoldering behavior of all upholstery materials; for example, UFAC's vertical char length performance metric does not always reflect the downward burning that typically occurs in polyurethane foam fillings. Additionally, the ASTM/UFAC method employs a draft-limiting enclosure that was designed to improve test repeatability but artificially restricts burning of the most smolder-prone fabrics. The non-time-limited UFAC tests may also adversely affect the repeatability of the test results. The Commission concludes that adopting the ASTM/UFAC tests without significant modification would have little effect on currently-produced upholstered furniture, and would therefore probably have negligible safety benefits beyond those already achieved under the voluntary industry program. Thus, the proposed rule has smoldering ignition requirements that are somewhat different from, and more stringent than, those of the UFAC guidelines. The proposed standard also contains open flame performance requirements for barriers; these barriers must protect interior filling materials from smolder-prone fabrics that may otherwise cause furniture to transition from smoldering to flaming combustion.

2. Standardized Test Materials

Comment. In addition to the CPSC staff's extensive studies on the suitability of various standard test materials, industry groups contributed research and submitted comments on the performance of standard cover fabrics and standard polyurethane foams specified in the CPSC staff's draft standards. Both the staff and industry noted the potential effects of interdependency of standard test materials, and the potential impact on test results of the observed variability in the performance of certain test materials. This variability chiefly related to a standard cotton velvet fabric specified in the open flame tests of the CPSC staff's 2005 draft standard; to a lesser extent, variability was observed in the behavior of the standard FR test foam used in the smoldering tests of the staff's 2005 draft. The comments generally recommended changes to the standard test materials or the test methods to eliminate the undesirable effects of standard material variability.

Response. The staff's research concluded that the variability identified in the performance of the standard fabric (and, in some cases, the standard non-FR foam) could adversely affect the repeatability and reproducibility of open flame tests, and could yield unacceptably inconsistent results. Similar inconsistencies were observed in the standard FR foam used in smoldering tests. Therefore, the staff revised the qualification requirements for standard test materials to ensure consistency. Further, in view of the hazard data and the complexity (including standard materials variability) of the open flame tests, the proposed rule eliminates the open flame tests for filling materials entirely, and retains standard fabrics for barrier tests only. This approach not only simplifies the proposed standard, but also eliminates the interdependency and variability issues raised by the commenters. The standard cotton velvet test fabric performs consistently in barrier smoldering tests, as does the standard rayon test fabric in barrier open flame tests. Since FR foam would not be needed to comply with the proposed rule, the rule specifies only standard non-FR foam in all tests.

3. Stringency of Requirements

Comment. Some industry groups opposed the CPSC staff's 2005 draft standard's open flame filling material tests in the absence of an open flame fabric test, and asserted that the 2005 draft's smoldering and open flame filling material requirements were too stringent for some lower-density foams to meet, even with FR treatment. Furniture industry commenters subsequently opposed any requirements that would be more stringent than those of the UFAC guidelines. Many commenters supported the concept of a barrier test option to afford flexibility to manufacturers and fabric suppliers, although some furniture industry groups opposed an open flame requirement for barriers and supported the UFAC smoldering requirement instead. Regarding the staff's 2007 draft proposal that became this proposed standard, some commenters argued that the stringent fabric smoldering requirements would require substantial re-engineering or FR treatment of fabrics. A number of commenters also recommended that CPSC study the effectiveness of reduced ignition propensity (IP), or ''fire-safe,'' cigarettes before proposing any flammability requirements for upholstered furniture.

Response. Many of these comments pertained to specific provisions of the open flame requirements of the CPSC staff's 2005 draft standard. The proposed standard does not contain open flame requirements for fabrics or fillings. As noted previously, CPSC's laboratory research on smoldering ignition indicates that several elements of the ASTM/UFAC voluntary approach would not be very effective at reducing the risk. The UFAC guidelines allow smolder-prone combinations of upholstery materials that would not adequately limit fire growth, either from smoldering or transition to flaming combustion. Since the proposed rule relies substantially on cover fabrics or barriers to protect interior filling materials, the proposed standard contains very stringent smoldering requirements, and requires that barriers provide protection regardless of cover fabric ignitability.

The Commission agrees that a significant proportion of predominantly cellulosic fabrics (i.e., chiefly cotton fiber content) would have to be modified or eliminated under the proposed standard. The Commission notes that these fabrics are the most smolder-prone materials used in upholstered furniture, and that many smolder-prone fabrics can sometimes overwhelm the inherent smolder resistance of synthetic filling materials like polyurethane foam or polyester batting. Thus, the proposed requirements are applied to those materials whose ignition behavior is the primary contributor to the risk.

The proposed standard would not prohibit fabric suppliers from using FR-treated fabrics to comply. However, furniture and textile industry representatives have stated a desire to avoid such products for aesthetic and cost reasons. Given the availability of non-FR alternatives, it is unlikely that fabric suppliers would use the FR treatments they said consumers would reject.

The Commission agrees that reduced ignition propensity cigarettes may be an effective means of reducing consumer product-related smoldering fires. Such reductions would likely occur irrespective of CPSC action on upholstered furniture. An increasing number of states (and Canada) have ''fire safe cigarette'' laws that now require or will require that only reduced-IP cigarettes be available for sale. Complying cigarettes would likely reduce, but would not eliminate, the risk of smoldering ignited upholstered furniture fires. The extent of any such reduction is unknown. The staff has initiated a study to review available state data and to conduct laboratory tests to evaluate the reduction in smoldering ignition propensity associated with reduced-IP cigarettes compared to conventional cigarettes. This work will help the Commission evaluate the potential effect of reduced-IP cigarettes on upholstered furniture fire losses.

4. Large Scale Validation Testing

Comment. Some stakeholders recommended that CPSC establish a correlation between its bench scale tests in the proposed rule and the performance of complying materials in larger or ''full'' scale tests that more reasonably represent the seating areas of finished articles of upholstered furniture. These large scale tests would help validate the results and potential effectiveness of the bench scale tests.

Response. The Commission agrees that large scale testing is a valuable source of information to help demonstrate the increased safety the proposed standard would provide. To supplement the CPSC staff's bench scale testing and limited large scale testing performed previously, the staff plans to sponsor such large scale tests. The Commission can use the results of these tests in developing a possible final rule.

5. Potential Benefits and Costs

Comment. Some industry groups submitted comments about the CPSC staff's draft preliminary regulatory analysis of potential benefits and costs associated with various regulatory alternatives. Most of these comments were from organizations that opposed various aspects of the CPSC staff's 2005 draft standard; some of the comments related to the staff's draft proposal that became the proposed standard.

The comments on the staff's analysis of the 2005 draft standard generally asserted that the staff had overestimated potential benefits and understated potential costs. A 2006 furniture industry report on the staff's analysis of the 2005 draft standard and alternatives criticized the statistical methodology used to develop national fire loss estimates, and recommended different methods that would generally result in lower estimates of potential benefits of a flammability rule. The report also questioned other aspects of the staff's estimation of potential economic benefits of a standard, positing that staff overstated benefits by using effectiveness estimates and value-of-life estimates that were too high, discount rates that were too low, and incorrect assumptions about the distribution of smolder-prone furniture fabrics among smoking vs. non-smoking households.

The 2006 industry report also asserted that the staff understated costs to filling material suppliers and furniture manufacturers and importers, and recommended that the staff's sensitivity analysis consider all combinations of factors affecting benefits and costs unless those factors were mutually exclusive. Manufacturers of polyurethane foam raised some of the same cost issues, and discussed anticipated difficulties in producing consistently-complying foams at the lower densities often used in upholstered arms and other areas of furniture.

Regarding the CPSC staff's 2007 draft proposal, some textile industry representatives criticized the emphasis on cover fabric performance, and expressed concern that the standard would not regulate filling material performance. They also expressed concern that difficulties in modifying many fabrics, combined with the cost of ''double-upholstering'' furniture to incorporate interior barriers, may lead suppliers to use FR treatments to comply. One report prepared for an environmental group recommended that CPSC include in its analysis of the 2007 draft estimates of economic losses from

increased cancer risks associated with FR filling material additives.

Several stakeholders recommended that CPSC consider the effect of reduced ignition propensity (IP), or ''fire-safe'' cigarettes on the potential benefits of a possible upholstered furniture flammability standard. One report prepared for an environmental group presented an alternative calculation of benefits incorporating some different assumptions about reduced-IP cigarette effectiveness than those made by the CPSC staff in 2006. Some industry commenters suggested that as reduced-IP cigarettes came into wider use, a standard for upholstered furniture would no longer have net benefits to the public.

Response. Regarding fire loss estimation methodologies, the CPSC staff noted several biases and errors in the industry report's approach that would misrepresent the estimates of fire losses. The 2006 industry report's criticism of the staff's method did not consider the proper allocation of fire incidents with unknown fire causes. Further, the indirect estimating method recommended by the industry report incorrectly used estimates of the number of fires to estimate death and injuries, thereby introducing bias and understating deaths. The CPSC staff's method correctly used death and injury counts weighted with probability-based estimates for fire deaths and injuries. Another method suggested by the industry report wrongly excluded some in-scope deaths from the body of data used to make the estimates. The use of these recommended alternative methods would significantly understate fire losses, and would thereby understate the potential benefits of a flammability rule.

Regarding benefits projections, the preliminary regulatory analysis of the proposed rule estimated the monetary value of potential benefits using estimates of effectiveness based on CPSC laboratory tests of upholstered furniture mockup assemblies constructed with ignition resistant fabrics or barriers, and using adjustments to reflect the projected mix of products on the market and other factors. Large scale tests will help support the effectiveness estimates. However, the Commission staff has ample experience to date with upholstery material testing to estimate that the proposed rule would likely be highly effective (about 60%) at reducing fire deaths, injuries and property damage. Even considering the effectiveness estimates for the CPSC staff's 2005 draft standard, there is no basis for applying effectiveness rates for the U.K. regulations to a CPSC rule. Further, the sensitivity analysis in the preliminary regulatory analysis accounts for uncertainty in the estimates.

The Commission staff estimated the present value of future safety benefits using discount rates (3% and 7%) recommended by the Office of Management and Budget in its guidance on regulatory analyses. Also, CPSC's statistical value of life estimate ($5 million) and sensitivity analysis range ($3–7 million) is consistent with values cited in the economic literature and widely used in regulatory decision-making.

Regarding the distribution of upholstered furniture constructed with smolder prone fabrics among smoking vs. non-smoking households, the preliminary regulatory analysis assumed that furniture fabric types are distributed evenly among households. Smolder prone fabrics are often, but not always, used on the very high-priced, decorator furniture more commonly found in higher-income households that tend less often to be smoking households. However, anticipated market trends include potential future increases in predominantly-cotton fabrics in more moderately-priced furniture, especially among imports, which tends to be lower in price than domestic products. To the extent that furniture with smolder prone fabrics is more often found in higher-income households with lower smoking prevalence, the benefits of a flammability rule could be reduced somewhat. The preliminary regulatory analysis notes in its sensitivity analysis that the likely impact on benefits would be small.

The sensitivity analysis in the preliminary regulatory analysis considers the impact of a variety of factors on potential benefits and costs. Varying more than one factor at a time is generally appropriate when those factors are highly correlated, rather than whenever they are not mutually exclusive, as the 2006 industry report suggested. The sensitivity analysis does take into account some combinations of factors, but not all factors that could conceivably affect benefits and costs. However, even if all of the combinations of possible factors were considered together, estimated net benefits of the proposed standard would still total $100 million or more from a year's production of complying upholstered furniture.

The staff considered likely cost impacts on fabric, filling material and other upholstery material suppliers in analyzing the potential impacts of the proposed standard. Cost estimates were generally reported directly as provided by firms in the industry sectors affected although some cost estimates varied significantly among firms. The preliminary regulatory analysis recognized several areas of cost concern, including low-density polyurethane foam and loose filling materials (for the staff's 2005 draft standard) and certain 100% cotton fabrics (for the 2007 draft). The staff analysis noted that while most upholstered furniture fabrics would meet the proposed standard without modification, more than half of all predominantly cellulosic fabrics may fail the proposed standard fabric smoldering test. These smolder-prone fabrics are typically used with synthetic filling materials that would otherwise be generally smolder resistant; thus, the proposed standard targets those fabrics contributing most to the risk of smoldering ignition.

The staff also noted that some of the more expensive decorator fabrics that would fail the proposed fabric smoldering test already are used in furniture that employs multiple layers of upholstery materials, or ''double upholstering.'' Decorative fabric suppliers have long supported a barrier option for use with non-complying fabrics. For most articles of upholstered furniture, the barrier option incorporated into the proposed standard would involve substituting complying barriers for existing interior fabrics or battings; this would amount to a ''drop-in replacement'' of existing components for most barriered furniture, and would not require significant additional assembly labor costs.

The preliminary regulatory analysis estimates costs based on the assumption that some or all non-complying fabrics not used with barriers would be FR treated; however, it is unlikely that a significant proportion of fabrics would actually be treated; thus, material costs may be lower than estimated in the analysis. Compliance costs associated with re-engineering some heavier-weight, 100% cellulosic fiber fabrics may be significant for some firms, although fiber content modifications are made routinely by producers (sometimes as often as every six months) to reflect style trends in the market. Blended-fiber fabrics in particular could probably be readily modified without difficulty or significant disruption.

Under the staff's draft 2005 standard, FR foam fillings would likely be used to comply. One of the FRs currently used in foams meeting the existing California TB–117 may pose cancer and non-cancer chronic health risks. Pending

further study of these and other FR chemicals, the preliminary regulatory analysis of alternatives assumed that hazardous FRs would not be used to comply, and therefore did not include a calculation of possible disbenefits associated with potential use of any potentially hazardous filling material FRs. The proposed standard would not require the use of any FRs in foam or other interior filling materials.

The Commission considered the potential impact of reduced-IP cigarettes, and continues to study this matter. State requirements for such cigarettes may reduce upholstered furniture fire losses over time irrespective of CPSC action. The extent of the reduction is unknown. The preliminary regulatory analysis does specifically account for possible risk reductions associated with reduced-IP cigarettes. If, for example, reduced-IP cigarettes reduced the level of benefits of the proposed rule to half the estimated level, then projected net benefits would be reduced from $367–387 million to $155–177 million per year's worth of complying furniture production. Even at a 70% benefit reduction, estimated net benefits of the proposed rule would still approach $100 million.

6. Potential Use of FR Chemicals

Comment. The Commission received a number of comments either opposing or supporting the potential use of FR chemical technologies to meet a possible flammability rule. Most of these comments related to the staff's previous, 2005 draft standard, which would have required that resilient, fibrous and loose filling materials (typically made of polyurethane foam or polyester fiber) be open flame resistant. Some comments specifically opposed the use of polybrominated diphenyl ethers (PBDEs), and cited studies on the potential health and environmental risks related to these compounds. At least one of the major filling material FRs, penta-BDE, that was previously used to meet California TB–117's open flame requirements, has been discontinued. While most fillings would be FR-treated under the 2005 draft, the proposed standard does not contain filling material requirements, and FR additives would not be needed to comply.

Some environmental groups opposed any new regulations that may add to the environmental burden of FR chemicals, especially halogenated FRs containing bromine or chlorine. They contended that since some FRs are persistent in the environment, bioaccumulative in animals and potentially toxic to humans, and since there is a lack of data on some aspects of the potential effects on human health and environmental risks, the Commission should not encourage the use of these chemicals. Some of these groups supported the furniture industry position that CPSC should impose only smoldering ignition requirements, on the presumption that FRs would not be needed to meet these requirements. The environmental groups strongly supported the staff's 2007 draft proposal that became this proposed standard.

Furniture and filling material producers opposed significant increases in FR usage on the basis that their workers could be exposed to more FRs released from component materials. They were also concerned that state and local environmental regulations may curtail the availability of economically feasible FRs and may adversely affect manufacturers' ability to recycle scrap materials. Furniture and fabric manufacturers also contended that, in view of recent adverse publicity, consumers would prefer not to risk exposure to potentially toxic FRs. Some representatives of fabric suppliers have also expressed concern that any smolder resistance requirements more stringent than those in the UFAC voluntary guidelines would force many firms to use FR treatments on predominantly cotton fabrics to comply.

Chemical producers stated that safe and effective FR solutions are available to address the furniture risk. They noted that non-halogenated alternatives for filling materials are currently being offered or developed, as are ''inherently-FR'' fiber barriers that do not present a significant likelihood of consumer exposure.

Response. CPSC developed the proposed standard mindful of the continuing uncertainty about potential health and environmental effects of FR chemical usage, with an objective of achieving significant reductions in fire deaths and injuries from upholstered furniture fires caused by smoking materials while minimizing reliance on FR additives in fabrics and filling materials to meet that objective. While the available scientific data are sufficient to show that some FRs would not present significant health or environmental risks, the Commission agrees that insufficient data are available to be reasonably sure that other FRs would not present health risks if used in upholstered furniture. The staff's health risk assessment for foam filling materials concluded that the polyurethane foam FR most widely used to meet California TB–117 may not present chemical risks to consumers but identified significant data gaps; the risk assessment further indicated that another currently used filling material FR may present both cancer and non-cancer risks to consumers. On the other hand, the CPSC staff's health risk assessment for barriers concluded that several commercially available technologies, including inherently-FR fiber products, could be used without presenting appreciable health risks to the public.

Under the proposed standard, neither fabrics nor filling materials would need to incorporate FR additives to achieve compliance. While FR-treated fabrics would not be prohibited, many fabric suppliers have indicated they would likely either modify the fiber content or construction of their most smolder prone fabrics, or continue to offer non-complying fabrics for use exclusively with complying barriers in the finished article of furniture. Thus, the Commission anticipates that FR fabrics would be the least likely means of compliance with the proposed rule. Barriers could incorporate FR treatments, but barrier suppliers have reported that they would likely offer inherently-FR fiber materials that do not pose a risk of potential exposure for upholstered furniture applications, similar to those products designed to meet the Commission's open flame rule for mattresses (16 CFR part 1633). Barriers are projected to be used in only about 5% of all upholstered furniture; most of this usage would be in designer or higher-priced furniture for which the relatively higher cost of barriers would not be a significant factor.

The Commission plans to monitor the progress of ongoing studies on FR chemicals and to consider the results of those studies as the regulatory process continues. At the request of the staff, the National Toxicology Program (NTP) of the Department of Health and Human Services has undertaken a review of several FRs that could be used to meet CPSC flammability rules. The NTP review will be a relatively long-term project that contributes to the overall level of knowledge about FR chemicals among scientists and regulators.

H. Preliminary Regulatory Analysis

The Commission has preliminarily determined to issue a rule establishing a flammability standard addressing the ignition of upholstered furniture. Section 4(i) of the FFA requires that the Commission prepare a preliminary regulatory analysis for this action and that it be published with the proposed rule. 15 U.S.C. 1193(i). The following discussion, extracted from the staff's memorandum titled ''Preliminary

Regulatory Analysis of a Draft Proposed Flammability Rule to Address Ignitions of Upholstered Furniture,'' addresses this requirement.

1. Introduction

The history of this rulemaking is discussed in Section A, Background, of this preamble. This Preliminary Regulatory Analysis discusses the impacts of provisions specified in the Commission's proposed standard for upholstered furniture. It provides information on the products and industries that are likely to be affected by actions taken to reduce upholstered furniture fires. The analysis also discusses potential costs and benefits associated with requirements of the proposed standard and reasonable alternatives. This analysis also discusses potential effects on small firms and other market impacts.

2. The Proposed Standard: Scope and Provisions

The proposed standard contains smoldering ignition performance requirements for cover fabrics, and smoldering and open flame performance requirements for interior fire barriers (if they are used as the method of compliance). The proposed standard applies to finished or ready-to-assemble articles of upholstered furniture (such as upholstered sofas, loveseats, sofa beds, rockers, recliners, and other chairs) that are: primarily intended for indoor use in residences; constructed with an upholstered seating area, comprised of a contiguous upholstered seat and back or arm(s); and manufactured or imported after the effective date.

The proposed standard offers manufacturers two alternative methods to produce complying furniture. Furniture items can comply by being made with upholstery cover materials that pass the cover material smoldering ignition resistance test (designated as ''Type I upholstered furniture'' in the proposed standard). Alternatively, manufacturers may comply with the proposed standard by using a barrier material under the upholstery fabric that passes the standard's applicable barrier tests (''Type II upholstered furniture''). This option allows manufacturers to use non-complying upholstery fabrics.

3. Products and Industries Potentially Affected

The largest class of furniture products that would be affected is upholstered furniture on wood frames and dual purpose sleep furniture such as sofa beds, commonly bought for use in living rooms and family rooms. Other types of affected products include upholstered metal frame, reed, and rattan furniture.

Products referred to as ''Household Upholstered Furniture'' by the Census Bureau are classified in code 337121 of the North American Industrial Classification System (NAICS). This classification includes production of upholstered furniture on frames made of wood, metal, or other materials, as well as dual-purpose sleep furniture, such as convertible sofa beds. The 2002 Economic Census reports that 1,686 U.S. companies (with 1,946 establishments) manufactured upholstered household furniture or dual-purpose sleep furniture as their primary product.[4] Many other firms may also produce upholstered furniture as secondary products.

The Economic Census reports that the value of shipments of upholstered household furniture by U.S. firms in 2002 was $10.3 billion. The Annual Survey of Manufactures reported value of product shipments of $10.0 billion in 2003 and $9.55 billion in 2004.[5] The value of product shipments for 2005 was reported by the Census Bureau to have totaled $9.9 billion.

Although there are a large number of upholstered furniture manufacturers, the top four companies accounted for nearly 35 percent of the total value of household upholstered furniture shipments in 2002 (the latest year for which industry concentration ratio data are available); the 50 largest companies accounted for about 67 percent.[6] Reports from the trade press indicate that the industry has become more concentrated in the last ten years. Several firms have ceased operations; others have merged with larger companies through buyouts. The consolidation included Furniture Brands International's acquisition of HDM Furniture Industries (which included Henredon and Drexel Heritage) in 2001, and La-Z-Boy's acquisition of Ladd in January 2000 and Bauhaus and Alexvale in 1999. La-Z-Boy is the number one upholstered furniture manufacturer (by dollar volume), and Ladd, Bauhaus, and Alexvale all previously ranked in the top 30. Furniture Brands International is the second-leading domestic manufacturer of upholstered furniture, and companies it acquired were previously part of number four-ranked LifeStyle Furnishings, International, Ltd.

The industry also includes many small companies and establishments. The 2002 Economic Census reports that only 29 percent of upholstered furniture establishments (564 of 1,946) had 20 or more employees, and only 10 percent (200 establishments) had 100 or more. By some measures, such as the U.S. Small Business Administration's (SBA's) definition for qualification for small business loans, a furniture manufacturing company is considered to be ''small'' if it has fewer than 500 employees (at all of its establishments). This definition encompassed more than 97 percent of firms in the industry in 2002.[7]

Exports of upholstered furniture had a value of about $285 million in 2005, or almost 3 percent of the total value of shipments.[8] The value of imports of products categorized by the Census Bureau as NAICS 337121 was $2,792 million in 2005.[9] Therefore, there were net imports of about $2.5 billion. With estimated domestic shipments of $9.9 billion, these net imports resulted in total apparent consumption of upholstered furniture in 2005 (domestic shipments plus imports, minus the value of exports) of about $12.4 billion.

Imports have grown in recent years, accounting for about 22 percent of the value of total apparent consumption of residential upholstered furniture in 2005. By way of comparison, about 10 percent of the value of apparent consumption of upholstered household furniture in 1999 was imported. The leading country of origin is China, which accounted for about 52 percent of the value of imports in 2005 and nearly 63 percent of the value of imports in 2006. Mexico accounted for about 11 percent of imports in 2006; Italy about 8 percent, and; Canada about 5 percent. These four countries accounted for 86 percent of the total value of imported upholstered furniture in 2006.

The importance of China as a source for imports has grown significantly in recent years. China supplanted Italy as the leading country of origin in 2003, and by 2006 the value of imports from China was almost 6 times that of the second-ranked country of origin, Mexico. Italy had been the number one source for upholstered furniture imports

[4] U.S Census Bureau, U.S. Department of Commerce, 2002 Economic Census, report EC02–311–337121, ''Upholstered Household Furniture Manufacturing: 2002,'' September 2004.

[5] U.S Census Bureau, U.S. Department of Commerce, Value of Product Shipments: 2005, Annual Survey of Manufactures, November 2006.

[6] U.S Census Bureau, U.S. Department of Commerce, 2002 Economic Census, report EC02–31SR–1, ''Concentration Ratios: 2002,'' May 2006.

[7] Based on 2002 firm size data compiled by the United States Small Business Administration's Office of Advocacy which is available online at *http://www.sba.gov/advo/research/data.html*.

[8] U.S. Department of Commerce data.

[9] U.S. Department of Commerce and U.S. International Trade Commission data (c.i.f. cost basis).

for many years. The majority of units from both China and Italy in 2004 reportedly were upholstered in leather.[10] Although much of the gain in China's market share has been at the expense of Italian imports, some of the furniture imported from China is from plants that have been established by several major Italian firms. China has been the leading source of wood (non-upholstered) furniture imports and its growth as a source of upholstered furniture is expected to continue.

In addition to affecting manufacturers of residential upholstered furniture typically found in living room and family rooms, the proposed standard also includes dining room and kitchen chairs within its scope if they are made with contiguously upholstered seats and backs. Similarly upholstered desk chairs purchased for household use are also covered by the standard. Dining chairs are generally products of firms classified in the wood household furniture industry, NAICS 337122. The Economic Census reports that 4.8 million wood dining room chairs were shipped in 1997, with a value of shipments totaling about $526 million. In 2002, shipments fell to 2.9 million chairs, with a value of about $446 million. The decline in domestic shipments is attributable to significant increases in imports of wood furniture from China and other countries.

Census data are not reported separately for upholstered and non-upholstered dining chairs. In 1994, an industry-sponsored study surveyed participants in the voluntary industry program to improve the cigarette ignition resistance of furniture that was developed by the Upholstered Furniture Action Council (UFAC). Among the firms surveyed were manufacturers of upholstered dining room and kitchen seating. The study report estimated that the total value of shipments of such furniture that complied with the UFAC Program (and, therefore, had upholstered seats) was about $250 million for 1993.[11] Based on the value of 1992 shipments ($580 million), perhaps 3 to 4 million upholstered dining chairs were shipped by these UFAC participants. A great majority of these items may not have had upholstered backs, or they had upholstered backs that were not contiguous with upholstered seats. Other firms that are not participants in the UFAC Program also manufacture upholstered dining furniture. Given the limitations of the market data, the number of dining chairs produced annually that fall within the scope of the proposed standard cannot be estimated with much precision, although the total number of units is thought to be relatively small.

Annual domestic retail sales of all types of living room and family room upholstered furniture total about 30 to 33 million units with a value of over $20 billion. Furniture manufacturers, especially smaller firms, commonly market their products through independent sales representatives who provide information on the market, and get and service new retail accounts for manufacturers. Recently, some manufacturers have reduced their reliance on independent representatives by employing their own salespeople.

Besides purchasing from manufacturers through independent sales representatives or the manufacturers' own sales staff, retailers may purchase furniture from wholesale furniture distributors. These wholesalers purchase from perhaps 25 to 30 manufacturers of different types and styles of furniture. The sales staffs of the wholesalers then call on retailers within their areas. Dealing through local wholesalers that stock an assortment of furniture, and that also offer competitive prices, credit, and other services, is advantageous to many retailers, particularly smaller firms.[12]

According to the 2002 Census of Retail Trade, 19,403 retail establishments carried upholstered furniture as a product line.[13] Retail prices of upholstered furniture fall into a very broad range, depending on materials and manufacturing techniques used. Larger retailers are more likely to purchase directly from furniture manufacturers, and smaller firms are more likely to purchase through wholesale distributors. Increasingly in recent years, retailers have reportedly devoted more floor space to private labeled furniture imported directly from foreign manufacturers. In response, several of the larger domestic furniture manufacturers have opened or expanded their own retail outlets.

A review of trade publications indicates that approximately 100 to 200 domestic manufacturers derive a significant share of their revenues from fabric for residential upholstered furniture.[14] This number includes textile mills that produce finished upholstery fabric and textile finishers that purchase unfinished goods and perform additional processes, such as printing and dyeing. Like the upholstered furniture manufacturing industry, the 1990s saw consolidation of firms specializing in upholstery fabric production, with larger firms buying out competitors or divisions of competitors. However, in just the last few years the U.S. industry has been shaken by the decreased demand for domestically-produced fabric as a result of increased competition from imported upholstery fabric, the increased popularity of leather upholstery, and the dramatic increase in consumption of upholstered furniture imported from China. One of the largest marketers of upholstery fabrics in the U.S. reported that the trend to greater foreign competition and the entry of more converters of upholstery fabric (companies that purchase and resell fabrics) has resulted in greater fragmentation of the upholstery fabric industry in recent years, with lower barriers to entry, and an increase in competition based on price.[15]

Interior fabric revenues of the top 10 firms totaled more than $1.9 billion in 2002, based on a trade press survey.[16] These revenues included sales of fabrics other than those used in residential upholstery. A similar survey found that the top 10 upholstery fabric mills had combined revenues from interior fabric shipments of $2.4 billion.[17] In addition to declining sales for the leading U.S. upholstery fabric manufacturers, the difficult state of the industry is evidenced by recent bankruptcies of firms that were once industry leaders, such as Joan Fabrics (previously the number one upholstery manufacturer) and Quaker Fabric (previously the number three firm). Both of these firms ceased operations and their production facilities were liquidated in 2007.

Textile mills that make upholstery fabrics as their primary products are included in the North American NAICS code 313210. Of 663 firms in NAICS 313210 in 2002, only 63 (about 10 percent) had 500 or more employees. About 65 percent of the firms had fewer

[10] Industry analyst, Jerry Epperson, reported in Furniture Today, December 12, 2005. p. 66.

[11] Heiden Associates, Inc., ''Report on Survey of UFAC Members re: Compliance with Upholstered Furniture Cigarette Ignition Flammability Standard,'' December 15, 1994.

[12] Handbook of Furniture Manufacturing & Marketing, Volume 9, Wholesaling, AKTRIN Research Institute and High Point University, May 1994.

[13] U.S Census Bureau, U.S. Department of Commerce, 2002 Economic Census, report EC02–441–09 ''Furniture Stores: 2002,'' August 2004.

[14] Including the Directory of Manufacturers published by the former industry association, the American Textile Manufacturers Institute (ATMI).

[15] Culp, Inc., Annual Company report for the fiscal year ended April 29, 2007.

[16] ''U.S. fabric producers still standing despite import wave.'' Furniture/Today, Cahners Publishing, Greensboro, NC, June 2, 2003.

[17] ''Mastercraft buy puts Joan at top.'' Furniture/Today, Cahners Publishing, Greensboro, NC, June 1998.

than 20 employees.[18] The SBA considers firms with fewer than 1,000 employees to be small businesses for the purposes of programs administered by that agency. Although these data are indicative of the sizes of firms involved in the production of furniture upholstery fabrics, NAICS 313210 encompasses many firms that produce fabrics other than furniture upholstery. Nevertheless, it is likely that nearly all manufacturers of upholstery fabrics could be considered small businesses under SBA guidelines.

Fabric finishers also tend to be small. Finishers are firms that receive unfinished fabrics (''greige goods'' or ''gray goods'') and perform additional manufacturing processes (e.g., printing, dyeing, backcoating, needle-punching, and stain-guarding). Fabrics may be purchased by the finishers, or finished under contract to other firms that supply the fabrics. Fabric finishers are classified in NAICS code 313311. Of 1,016 broadwoven fabric finishing firms in NAICS 313311 in 2002, only 30 (3 percent) had 500 or more employees.[19] Only a few firms currently apply FR treatments to upholstery fabrics.

The U.S. Census Bureau reported that U.S. upholstery fabric production in 2004 was 284 million square yards (which is the equivalent of 189 million linear yards).[20] This production was 43 percent lower than 2002's reported production of 499 million square yards (332 million linear yards) of upholstery fabric.[21] The number of looms in operation for the production of these fabrics totaled 2,610 at the end of 2004, down 20 percent from 3,098 looms at the end of 2002. The major end-use markets for upholstery production are in upholstered furniture and automobile manufacturing. Upholstery fabrics are also used in the manufacture of window treatments and other home textiles. Based on a survey of upholstered furniture manufacturers by Ciprus, Ltd., about 233 million linear yards of upholstery fabric were consumed in the production of household furniture in 2001.[22] This total does not include leather and vinyl upholstery, which are estimated to have comprised about 30 percent of all furniture upholstery materials used in 2001. Therefore, total upholstery use for the domestic manufacture of residential upholstered furniture was about 333 million linear yards. Estimates of total annual upholstery fabric consumption based on average requirements for chairs and sofas/loveseats are 225 million linear yards.[23]

The U.S. Census Bureau's Economic Census report, Upholstered Household Furniture Manufacturing: 2002, included information on the costs of upholstery fabrics and other materials used in the production of upholstered household furniture in that year. The report placed the delivered cost of woven cotton upholstery fabrics (excluding ticking) at $312 million and the delivered cost of other woven upholstery fabrics, such as those made of rayon, nylon, and polyester (excluding ticking) at $802 million.[24] The combined total delivered cost of upholstery fabric of $1,114 million was about 22 percent of the total delivered cost of all materials used in upholstered furniture manufacturing in 2002 (which was, according to the Census Bureau, $5,107 million). Other upholstery cover materials include leather, which is not reported as a separate material category by the Bureau of the Census, and coated and laminated fabrics, which had a delivered cost of about $185 million in 2002. In its 2007 Annual Report, La-Z-Boy, the largest manufacturer of upholstered furniture in the U.S., reported that purchased cover materials (primarily fabric and leather) accounted for about 28 percent of the total cost of raw materials for its upholstery group.[25]

Until recent years, relatively little upholstery fabric was imported. A report by Keyser Ciprus, Ltd., estimated that 8 million linear yards of residential upholstery fabric were imported in 1997. That accounted for approximately 2 percent of total consumption of upholstery fabric for residential furniture production in that year.[26] However, as noted above, foreign upholstery fabric production facilities (located primarily in China) have expanded operations and imports of upholstery fabrics have grown substantially.

Much of the foreign production is from facilities that are owned or operated in partnership with U.S. textile firms. For example, Culp, Inc., reported that almost 60 percent of their sales of upholstery fabrics in their fiscal year ended April 29, 2007, consisted of fabrics produced in plants outside the U.S., compared to 17 percent of sales just two years before.[27] Culp owns and operates four upholstery plants in Shanghai, China, and markets other fabrics from third party sources which are also located in China. The firm only has one remaining upholstery fabric plant in the U.S., down from fourteen in 2000.[28] Culp's experience in shifting production to foreign plants has also been reported by other U.S. upholstery fabric manufacturers. In January 2007 Richloom Fabrics Group shifted production of its Berkshire Weaving upholstery line from its South Carolina plant to a facility in Shanghai.[29] Quaker Fabric Corporation also entered into business agreements in recent years with Asian firms to produce fabrics it designs. Quaker estimated that, industry-wide, about 42 percent of total domestic upholstery fabric sales (excluding automotive fabrics) were imported in 2004, versus only 11 percent in 2002. The company's management believed it was likely that the trend continued, and it estimated that about 60 percent of furniture upholstery fabric sales were imported by the end of 2006.[30] As noted above, Quaker Fabric, which had long been a major U.S. producer of upholstery fabric, could not successfully adjust its operations to meet the recent market shifts, and the firm liquidated its operations in 2007.

At least until recent years, exports of upholstery fabric were significant for many U.S. manufacturers. In the late 1990s as much as 20 percent of the upholstery fabric production by U.S. manufacturers in recent years may have been exported. As noted above, more upholstery fabric is being imported from China and other foreign sources in more recent years, and some major U.S. fabric

[18] Based on 2002 firm size data compiled by the United States Small Business Administration's Office of Advocacy which is available online at *http://www.sba.gov/advo/research/data.html.*

[19] *Ibid.*

[20] U.S. Census Bureau. *Current Industrial Reports, Broadwoven Fabrics (Gray):* 2004. MQ313T(04)–5. June 2005.

[21] U.S. Census Bureau. *Current Industrial Reports, Broadwoven Fabrics (Gray):* 2002. MQ313T(02)–5. June 2003.

[22] Ciprus Limited, LLC. *The North American Market for Contract & Residential Upholstery Fabric,* 2001.

[23] According to industry sources, an average of approximately 7 linear yards of fabric is needed to upholster chairs and 11 to 15 yards are needed for sofas. Based on about 31.5 million annual unit shipments (of which perhaps about 53 percent are sofas, sofabeds, and loveseats and about 47 percent are other chairs), estimated annual upholstery material requirements are about 321 million linear yards (about 217 million yards for sofas, sofabeds and loveseats plus 104 million yards for chairs).

[24] U.S. Census Bureau, *2002 Economic Census, Upholstered Household Furniture Manufacturing:* 2002, EC02–311–313311. September 2004.

[25] La-Z-Boy, Inc. *Annual Report for the Fiscal Year Ended April 28, 2007* (Form 10–K.) Page 5.

[26] Keyser Ciprus Limited, op. cit., p. 40.

[27] Culp, Inc. Annual company report for the fiscal year ended April 29, 2007. (Reportedly includes fabrics produced at Culp's Shanghai manufacturing plant and production sourced from other Asian firms.)

[28] Culp, Inc. Annual company report for the fiscal year ended April 23, 2000.

[29] Andrews, Susan M. ''Richloom moves production to China.'' Furniture/Today, December 18, 2006.

[30] Quaker Fabric Corp. *Annual Report for the Fiscal Year Ended December 30, 2006* (Form 10–K.).

manufacturers have established production facilities in China, or have established business relationships with Chinese firms to produce fabrics to their specifications and designs. These market changes could be expected to reduce exports by domestic firms from previous levels.

There is a growing practice, especially for leather, to purchase fully cut and sewn parts from areas outside of the United States including but not limited to: Argentina, Brazil, China, Italy, Thailand and Uruguay. This trend should continue given the lower labor costs in some of these areas and other existing economic conditions. La-Z-Boy reports that importing cut and sewn leather parts results in savings of 10 to 20 percent compared to domestic purchases and fabrication of these parts.[31] Cut and sewn ''kits'' reportedly are manufactured to the specifications of furniture manufacturers at facilities maintained by foreign fabric producers. Culp reports that it rapidly expanded its cut and sew operations in its Shanghai plants.[32]

CPSC-sponsored surveys of furniture manufacturers in 1981, 1984, and 1995, and commercial surveys in 1997, 2001, and 2006 [33] provided information on two characteristics of fabrics: fabric type and principal fiber (or material) type. Fabric Type refers to commonly-accepted descriptions of the ways in which fabrics are manufactured or of their distinctive characteristics. For the period covered by these surveys, manufacturers increased their use of jacquard and dobby fabrics, and decreased their use of velvet fabrics.[34] Usage of cotton prints and flocks fluctuated within fairly narrow ranges during the period, according to the surveys.

Fiber (or material) Type refers to the fibers or materials used in the manufacture of the fabrics or upholstery. Most upholstery fabric fibers are classified as cellulosic (e.g. cotton and rayon) or thermoplastic (e.g., polyester, polyolefin, and nylon); other materials used to make upholstery include vinyl (which is coated on a base fabric), wool, and leather. Based on the 2006 Ciprus Limited survey, cellulosic fabrics currently account for about 25 percent of upholstered furniture upholstery covering materials. Thermoplastic fabrics account for 45 percent; leather, wool and vinyl-coated fabrics account for about 30 percent (mostly leather).

Review of the data on material types from the surveys conducted since 1981 indicates that the most notable changes over the years have been the increase in use of leather at the expense of both cellulosic and thermoplastic fibers. The Ciprus survey in 2001 found that about 30 percent of furniture covering materials used in that year was leather, significantly greater than found in the earlier surveys.[35] Fabrics made from predominantly cellulosic fibers include heavier-weight fabrics (such as cellulosic jacquards and velvets) and lighter-weight fabrics (mainly cotton prints). Analysis of survey data since 1981 indicates that heavier cellulosic fabrics have usually comprised about 15 to 20 percent of all upholstery covering yardage.

4. Characteristics of Furniture in U.S. Households

The number of furniture units in use is estimated with the CPSC Product Population Model, based on available annual sales data and industry estimates of the average product life of furniture.[36] Estimates are for sofas, loveseats, armchairs, recliners, convertible sofas and other upholstered furniture commonly found in residential living rooms, family rooms, and guest rooms.

Sales are defined as shipments from U.S. manufacturers plus net imports. Annual shipment data are available from the Economic Census published every five years (i.e., 2002, 1997, 1992 * * *) by the Bureau of the Census. For upholstered wood furniture and dual-purpose sleep furniture, the Economic Census usually provides information on unit shipments, by type (such as sofas, sleep sofas, rockers, recliners, and other chairs). For product categories for which unit shipment data were not available, we estimated unit shipments by assigning average per unit values to the Census data on value of shipments. Finally, estimates of net imports were added to shipments to estimate the total number of upholstered units sold to U.S. households. For the years in which Economic Census data are not available, shipment estimates were based on furniture shipment values published by the Department of Commerce in the Annual Survey of Manufactures.[37]

The CPSC's Product Population Model uses sales data and information on the average product life to estimate the numbers of items remaining in use in the years following their purchase by consumers. The estimated average useful life of upholstered furniture reportedly ranges from 15 to 17 years.[38] Based on the assumption that the expected life of a piece of upholstered furniture is 16 years, the average number of upholstered items in household use during 2002–2004 was about 447 million pieces.

Surveys of furniture manufacturers in the last several years show the shift towards thermoplastic fabrics peaked during the period of the mid-1980's to the mid-1990's. Information provided to the CPSC by the Upholstered Furniture Action Council (UFAC) showed that a significant shift to greater use of thermoplastic fabrics began in the 1950's, and became more pronounced in the 1970's.[39] These data on usage of different types of fabrics over the years can be used to characterize upholstery fabrics found on furniture in U.S. households. An estimated 31.2 percent of furniture in use in U.S. households during the period 2002–2004 was covered with fabrics predominantly made with cellulosic fabrics; an estimated 50.2 percent were covered with predominantly thermoplastic fabrics, and 18.6 percent were covered with other materials (mainly leather, wool, and vinyl-coated fabrics).

5. Expected Benefits of the Proposed Standard

The expected benefits of the proposed standard are estimated as the reduction in the societal costs associated with upholstered furniture fires that would be prevented by the standard. We estimate the benefits in several steps. First, the average annual societal costs of upholstered furniture fires are estimated, based on estimates of the aggregate annual costs of fire-related deaths, injuries, and property damage. These costs are differentiated by ignition source (i.e., cigarette vs. open flame ignition) and by fabric covering type (since different fabrics exhibit different ignition propensities). Societal costs are also estimated on a ''per product in use'' basis, based on

[31] La-Z-Boy. *op. cit.,* p. 4.

[32] Culp, Inc. Annual Company report for the fiscal year ended April 29, 2007.

[33] Keyser-Ciprus, Ltd. survey (1997) and Ciprus Limited, LLC, surveys (2001 and 2006).

[34] ''Jacquards'' and ''dobbies'' refer to the types of looms and weaves used to produce fabrics. Brocades, damasks, velvets, tapestry weaves, and matelasses are often jacquard-woven. Dobbie looms enable weaving of small, geometric figures as a regular pattern. Dobby looms produce patterns that are beyond the range of simple looms, but are somewhat limited compared to a jacquard loom, which has a wider range of pattern capabilities.

[35] Ciprus Limited. *op. cit.*

[36] M.L. Lahr and B.B. Gordon, Final Report on Product Life Model Feasibility and Development Study, Battelle Columbus Laboratories, July 14, 1980.

[37] Estimated shipments before 1967 were based on the Federal Reserve's annual furniture production index.

[38] Based on discussions between industry officials and Department of Commerce personnel.

[39] Report to the CPSC on the UFAC Voluntary Program, Upholstered Furniture Action Council, March 21, 1978.

estimates of the numbers of furniture items in use.

Second, since each furniture item is expected to remain in use for an average of 15 to 17 years, the present value of the product's estimated lifetime fire costs is estimated by summing the discounted annual costs over the item's expected useful life. The estimated annual societal costs that are expected to accrue over the furniture item's useful life are discounted at an annual rate of 3 percent. This rate is consistent with recommendations in the economic literature for discounting the costs and consequences of health programs.[40] Societal costs have also been estimated using a 7 percent discount rate, as recommended by the Office of Management and Budget (in addition to 3 percent) in its guidance to Federal agencies on the use of discounting in regulatory analysis (Circular A–4).

Third, the expected effectiveness of the proposed standard (i.e., the percentage reduction in fire losses) is estimated for each ignition source and upholstery cover type. As discussed below, effectiveness of the standard at reducing societal costs is based on judgments regarding improvements attributed to fabric treatments and effectiveness of barrier materials.

We begin the analysis by evaluating the societal costs of cigarette fires and the expected benefits associated with preventing these fires. This is followed with an evaluation of the societal costs and likely benefits associated with the prevention of open-flame ignited fires.

a. Expected Benefits From Reducing Cigarette Fire Losses

Societal costs of furniture fires started by cigarettes. The purpose of this section is to estimate the societal costs of cigarette-related upholstered furniture fires to use as the basis for estimating the cigarette benefits. In the next section, benefits are estimated as avoided societal costs. These costs are based on fire losses (deaths, injuries and property loss) estimated by the CPSC Directorate for Epidemiology, which relies on fire loss data acquired from the National Fire Protection (NFPA) annual survey of fire departments and the U.S. Fire Administration (USFA) National Fire Incident Reporting System (NFIRS). The most recent fire data available to make such estimates was for the 2002–2004 time period. Societal cost estimates are also differentiated by fabric cover types, which (as described below) exhibit different cigarette ignition propensities.

According to the CPSC's Directorate for Epidemiology, there was an average of 260 addressable civilian deaths and 320 nonfatal civilian injuries annually from fires started by cigarettes during the 2002–2004 time frame.[41] There was also an average of about $73 million annually (in 2005 dollars) in property losses from cigarette-ignited fires.[42] By combining the costs associated with deaths, injuries, and property damage, total societal costs can be estimated.

For analytic purposes staff assigns a value of $5 million as the value of a statistical life for the calculation of societal costs. The $5 million estimate is consistent with the general range of the value of a statistical life published in the literature, which generally falls in the $3 million to $7 million range.[43] Multiplying the annual estimate of about 260 deaths by the value of a statistical life of $5 million yields annual fatality costs of $1.3 billion.

Nonfatal injuries were assigned an average cost of $146,740 each. The basis for this estimate was the analysis of burn injury costs reported in the August 1993 report ''Societal Costs of Cigarette Fires,'' part of the research sponsored by the CPSC under the Fire Safe Cigarette Act of 1990.[44] [45] The $146,740 figure represents a weighted average of injury costs (including pain and suffering) for both hospitalized injuries and injuries treated and released. The estimate of 320 injuries annually results in societal costs of about $47 million.

As noted above, the proposed standard would also address about $70 million annually in property losses from fires started by cigarettes, based on estimates for the 2002–2004 period. Consequently, the total annual costs of cigarette-ignited fires addressed by the proposed standard amounted to an annual average of about $1,420 million ($1,300 million + $47 million + $73 million) during the 2002–2004 time period.

Information on the number of furniture items (i.e., separate pieces of furniture) in use provides a basis for estimating the costs of cigarette ignition fires on a per unit basis. The average estimated number of items of residential living room and family room upholstered furniture in use during the 2002–2004 time period was about 447 million units, based on an expected useful product life of 15–17 years. Given the annual societal costs and the number of furniture units in use, the annual societal cost per unit of furniture in use, resulting from cigarette ignition, amounted to about $3.18 ($1,420 million/447 million units of furniture). This per unit societal cost estimate represents an average across all furniture items in use. However, because different fabric coverings for furniture exhibit different ignition propensities, we can develop more precise estimates of per unit societal costs by accounting for the fabric cover.

Ignition testing of chairs by CPSC staff and others over the years has shown that the cigarette ignition hazard of furniture mainly involves chairs covered with fabrics that are predominantly woven from cellulosic fibers, i.e., cotton and rayon. Chair testing done by the CPSC staff and California's Bureau of Home Furnishings has shown that chairs covered with predominantly thermoplastic fabrics (e.g., polyester, polypropylene, and nylon) are much less likely to ignite from cigarettes. Chairs covered with some materials, such as leather, vinyl-coated fabrics, and wool fabrics are resistant to ignition from cigarettes. Given the disparity of ignition propensities, some types of furniture would be expected to result in greater societal costs from fires. Information relevant to the determination of average ignitability and estimation of societal costs for furniture covered with different types of materials is discussed below.

The results of the analysis described in this section (including estimates of market shares by fabric covering, estimates of ignition propensities and risk by fabric type, and estimates of

[40] For example: Viscusi, W.K., ''Discounting Health Effects for Medical Decisions,'' in *Valuing Health Care: Costs, Benefits, and Effectiveness of Pharmaceuticals and Medical Technologies,* ed. F.A. Sloan, 123–24. New York: Cambridge University Press. 1995. Also, Gold, Marthe R., et al., *Cost-Effectiveness in Health and Medicine.* New York: Oxford University Press. 1996.

[41] Miller, David. ''2002–2004 Fire Loss Estimates for Upholstered Furniture.'' Directorate for Epidemiology, U.S. Consumer Product Safety Commission, August 3, 2007 (Draft). The Directorate for Epidemiolgy based its estimates on a methodology that was refined to address concerns raised by the General Accounting Office (GAO) in a 1999 report, ''Consumer Product Safety Commission: Additional Steps Needed to Assess Fire Hazards of Upholstered Furniture.''

[42] Estimated average property losses of about $65 million for 2002–2004 (Miller, *op. cit.*) are expressed in 2004 dollars ($70 million) based on changes in the Producer Price Index for construction materials.

[43] Viscusi, W. Kip, ''The Value of Risks to Life and Health,'' Journal of Economic Literature, Vol. XXXI, December 1993, pp. 1912–1946.

[44] Zamula, William W., ''Costs for Non-Fatal, Addressable Residential Civilian Injuries Associated with Upholstered Furniture Fires.'' (Memorandum to Gregory B. Rodgers, AED, EC) Directorate for Economic Analysis, U.S. Consumer Product Safety Commission. September 6, 2007. (Costs are estimated in 2005 dollars.)

[45] Miller, Ted R., et al., ''Societal Costs of Cigarettes Fires,'' prepared for the U.S. Consumer Product Safety Commission under the Cigarette Safety Act of 1984, August 1993.

annual societal costs) are summarized in Table 1.

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Table 1.

Estimated Societal Costs of Cigarette Ignition of Upholstered Furniture, by Ignition Propensity of Cover Materials, for Furniture in Use During 2002-2004 *(in 2005 dollars)*

Type of Upholstery Cover Material	(1) % of Furniture in Use, 2002-2004	(2) Ignition Propensity[1]	(3) Weighted Ignition Propensity (1) x (2)	(4) % of Overall Risk [5]	(5) Annual Societal Costs per Unit	(6) Lifetime Societal Costs per Unit, Adjusted [6]
Severely Cigarette-Ignition-Prone Cellulosics [2]	12.0%	.521	.063	60.9%	$16.08	$140.04
Moderately Cigarette-Ignition-Prone Cellulosics [3]	5.8%	.322	.019	18.0%	$9.94	$86.60
Lower Cigarette-Ignition-Prone Cellulosics [4]	13.4%	.105	.014	13.7%	$3.24	$28.24
Thermoplastics	50.2%	.015	.008	7.3%	$0.47	$4.06
Leather, wool, vinyl-coated	18.6%	See note [7]	See note [7]	See note [7]	See note [7]	See note [7]

[1] Ignition Propensity is based on ignition testing of chairs performed by CPSC staff since 1980. These data are based on "ignition" being determined by char-length measurements. This large body of chair test data available to the staff is the best indication of relative ignition propensities of furniture.

[2] UFAC Class II (5.6% of fabrics) and Cellulosic UFAC Class I/NBS Class D Fabrics (6.4% of fabrics).

[3] UFAC Class I/NBS Class C Cellulosic Fabrics.

[4] Predominantly Cellulosic Class B Fabrics according to the NBS draft standard.

[5] The Percent of Overall Risk for each type of upholstery cover material (column 4) is calculated by dividing weighted ignition propensity (column 3) by the summation of the weighted ignition propensities (0.103).

[6] Based on a 3% discount rate.

[7] Based on limited laboratory testing data, leather, wool, and vinyl-coated fabrics are assumed to be highly resistant to ignition from cigarettes. Therefore, ignition propensity of these materials is small, but unknown, as are the annual and lifetime societal costs per unit covered with these materials.

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Estimates of the types of upholstery on furniture pieces found in households during 2002–2004 were derived from historical data from surveys in various years, estimates of annual sales of upholstered furniture, and calculations of the survival of furniture in years after purchase (using the CPSC's Product Population Model). Based on these sources, the Directorate for Economic Analysis estimates that 50.2 percent of the 447 million upholstered furniture items that were in use during 2002–2004 were covered with thermoplastic fabrics, 31.2 percent were covered with cellulosic fabrics, and 18.6 percent were covered with leather, vinyl-coated fabrics, or wool fabrics. These market shares are shown in Table 1, column 1.

Note that the market shares in the first three rows sum to the 31.2 percent of the furniture in use covered with cellulosic fabrics. However, because extensive testing data show that some cellulosic fabrics are more likely to ignite than others, this analysis also separates cellulosic fabrics into three categories according to their ignition propensities. The next several paragraphs describe this sub-categorization of cellulosic fabric coverings.

Testing by the CPSC laboratory using the proposed Upholstery Fabric Smoldering Ignition Test [46] indicates that upholstery cover materials which are most likely to fail the test are fabrics woven entirely of cellulosic fibers that are heavier than eight ounces per square yard. These fabrics are assumed to include all fabrics that would be classified as Class II fabrics under the UFAC Program as well as predominantly cellulosic fabrics that would be classified as Class I fabrics under the UFAC Program and Class C and D fabrics according to the proposed furniture flammability standard fabric test method developed by the National Bureau of Standards (NBS, now the National Institute of Standards and Technology) in the 1970s. Estimation of the percentage of fabrics that would fail the fabric test of the proposed standard, and assessment of the societal costs presented by different types of upholstery cover materials are, therefore, based on fabric and chair test data accumulated over the years.

Classification of cellulosic fabrics according to the test developed by UFAC (which classifies fabrics according to char length on the vertical surface when tested over standard non-FR polyurethane foam) and the test developed by NBS (which classifies fabrics according to char length when tested over a glass fiberboard substrate) have been used to categorize the ignition performance of cellulosic fabrics in this analysis. CPSC laboratory analyses since 1980 found that about 82 percent of cellulosic fabrics tested were Class I fabrics according to the fabric classification test of the UFAC Program (i.e., having a vertical char length of less than 1.75 inches), and 18 percent of cellulosic fabrics were UFAC Class II fabrics (i.e., having a vertical char length of 1.75 inches or greater). Assuming the tested fabrics were representative of cellulosic fabrics, 25.6 percent of all fabrics on furniture in use during 2002–2004 were UFAC Class I (31.2% that were covered with cellulosic fabrics × 82%) and 5.6 percent were UFAC Class II (31.2% × 18%).

Laboratory testing shows that the cover material smoldering resistance test of the proposed standard is more severe than the UFAC Fabric Classification Test.[47] Therefore, for the purposes of this analysis, UFAC Class II fabrics are assumed to fail the proposed fabric test without changes that would improve their ignition resistance. Limited testing also indicates that some portion of UFAC Class I fabrics will fail the fabric test of the proposed standard. Twenty-five percent of the Class I fabrics tested by the CPSC staff in 1980 and 1984 were found to be generally more ignition-prone Class D fabrics according to the NBS fabric classification test (i.e., sustaining chars of greater than 3 inches when tested over glass fiberboard). If we assume that such fabrics would fail the proposed standard's fabric test, an estimated 12 percent of fabrics found on furniture in 2002–2004 would have failed the test (5.6 percent which were UFAC Class II, plus 25 percent of the 25.6 percent of other cellulosic fabrics which were UFAC Class I. (Designated as ''Severely Ignition-Prone Cellulosics'' in Table 1.)

Fabrics assumed to pass the proposed standard include more moderately ignition-prone fabrics that are Class I according to the UFAC Fabric Classification test and Class C according to the NBS fabric test (i.e., sustaining chars of 1.5—3 inches when tested over glass fiberboard), and more ignition-resistant Class B cellulosic fabrics according to the NBS fabric test (which sustain char lengths of less than 1.5 inches when tested over glass fiberboard). The Class C fabrics accounted for an estimated 5.8 percent of fabrics found on furniture in 2002–2004 (22.5 percent of UFAC Class I cellulosic fabrics according to CPSC staff testing). These fabrics are designated as ''Moderately Ignition-Prone Cellulosics'' in Table 1. More ignition-resistant NBS Class B fabrics are estimated to have comprised 52.5 percent of UFAC Class I cellulosic fabrics, or 13.4 percent of all fabrics and covering materials found on upholstered items in 2002–2004. These fabrics are designated as ''Lower Ignition-Prone Cellulosics'' in Table 1.

Estimated ignition propensities for furniture covered with cellulosic fabrics are based on chair testing that was done in 1984 and 1994. Evaluating chair test results according to UFAC and NBS fabric classifications, 58.3 percent of test cigarettes were estimated to lead to ignitions for chairs covered with UFAC Class II fabrics. The estimated ignition propensity for test cigarettes on chairs covered with UFAC Class I, NBS Class D fabrics was 46.6 percent. Combining these two severely-ignition-prone fabric classes yields an average estimated ignition propensity of 52.1 percent (weighted by their 2002–2004 market shares). Cigarettes placed on furniture covered with moderately ignition-prone fabrics had an estimated 32.2 percent likelihood of resulting in ignition.[48] About 10.5 percent of test cigarettes were estimated to lead to ignitions for chairs covered with less ignition-prone cellulosic fabrics.[49] (See column 2 of Table 1.)

Because of less concern with the ignition propensity of thermoplastic fabrics, ignition testing data for such materials are more limited. Expanding chair test data to include tests conducted in 1980 led to an estimate that 1.5 percent of test cigarettes would result in ignition for furniture covered with thermoplastic fabrics. Additionally, based on limited laboratory ignition testing data, materials such as leather, wool fabrics, and vinyl-coated fabrics are assumed to be highly resistant to ignition from cigarettes.

The calculation of weighted ignition propensities of furniture covered with different types of fabrics is the product of the estimated market share of furniture in use in 2002–2004 for each type of fabric and its estimated ignition propensity. The estimated weighted ignition propensity was 0.063 for items covered with severely ignition-prone

[46] *The Upholstery Fabric Smoldering Ignition Test* is cigarette ignition testing of fabrics over a standard non-flame-retardant polyurethane foam substrate.

[47] Tao, Weiying, Ph.D. ''Evaluation of Test Method and Performance Criteria for Cigarette Ignition (Smoldering) Resistance of Upholstered Furniture Materials.'' Division of Electrical and Flammability Engineering, Directorate for Laboratory Sciences, U.S. Consumer Product Safety Commission. May 2005.

[48] UFAC Class I, NBS Class C cellulosic fabrics.

[49] NBS Class B cellulosic fabrics.

cellulosic fabrics (i.e., 12.0% share of the market × 52.1% ignition propensity); 0.019 for items covered with moderately ignition-prone cellulosic fabrics (5.8% × 32.2%); 0.014 for items covered with less ignition-prone cellulosic fabrics (13.4% × 10.5%); and .008 for items covered with thermoplastic fabrics (50.2% × 1.5%). (See column 3 of Table 1.)

The percent of total risk presented by furniture covered with different fabric types was derived by dividing estimated weighted ignition propensities by the sum of all weighted ignition propensities (which was about .103 for furniture in use in 2002–2004). Thus, as shown in the table, the more severely ignition-prone cellulosic fabrics [50] were estimated to account for 60.9 percent of the total risk (.063/.103); moderately ignition-prone cellulosic fabrics [51] accounted for an estimated 18.0 percent of the risk (.019/.103); less ignition-prone cellulosic fabrics accounted for about 13.7 percent of the risk (.014/.103); and thermoplastic fabrics accounted for about 7.3 percent of the risk (.008/.103). (See column 4 of Table 1.) [52]

The average annual societal costs associated with cigarette ignitions of each fabric type were estimated by dividing the product of estimated percent of total risk (above) and the total estimated average annual societal costs associated with cigarette ignition of furniture ($1,420 million) by the estimated number of units in use during 2002–2004 with each fabric type (447 million units in use × estimated market share). The average annual societal costs were estimated to be $16.08 for items covered with severely ignition-prone cellulosic fabrics (60.9% × $1,420 million/447 million × 12.0%); $9.94 for items covered with moderately ignition-prone cellulosic fabrics (18.0% × $1,420 million/447 million × 5.8%); $3.24 for items covered with less ignition-prone cellulosic fabrics (13.4% × $1,420 million/447 million × 13.7%); and $.46 for items covered with thermoplastic fabrics (7.3% × $1,420 million/447 million × 50.2%). (See column 5 of Table 1.)

The estimated lifetime societal costs per unit of furniture were calculated as the present value of the estimated annual societal costs over the expected product life of the item of furniture. The annual expected societal costs of cigarette ignition were assumed to apply each year that an item of furniture remains in household use. The CPSC's Product Population Model was used to calculate the likelihood that furniture items would remain in use in years after purchase. Annual societal costs per unit were multiplied by estimated probability of survival in subsequent years. The estimated stream of future expected societal costs were discounted to their present values, using a discount rate of 3 percent.

Available data suggest that other factors (in addition to changes in fabrics) have contributed to a decline in fires resulting from cigarette ignition of upholstered furniture over time. These factors include changes in smoking-related behavior of individuals, increased presence of smoke alarms, and changes in furniture filling materials. The present value estimates were further adjusted to account for an expected future decline in smoking-related fire incidents. This was done by forecasting future fire deaths by year, based on trends in deaths from cigarette ignitions of upholstered furniture during 1980–2004, and reducing the expected societal costs of cigarette ignited fires by the projected percentage reduction. This analysis found that expected lifetime societal costs, discounted to their present value using a 3 percent discount rate, should be reduced by approximately 28 percent. Thus, expected lifetime societal costs per unit of $195.31 for items covered with severely ignition-prone cellulosic fabrics were reduced to $140.04 after incorporating the trend data. Similar calculations led to estimates of lifetime societal costs of $86.60 for items covered with moderately ignition-prone cellulosic fabrics; $28.24 for items covered with less ignition-prone cellulosic fabrics; and $4.06 for items covered with thermoplastic fabrics. (See column 6 in Table 1.)

b. Expected Benefits

The analysis described above estimated the per unit hazard costs associated with the upholstery materials of different ignition propensities, based on the furniture in use during 2002–2004, the most recent time period for which fire data is available. However, as discussed in Section 4, the types of upholstery materials used in the production of furniture have changed over the years. Since the proposed standard would address risks associated with current production, projection of benefits requires estimating the societal costs associated with materials now being used to manufacture furniture. This is accomplished by estimating the percentage of furniture items currently made with covering materials of differing ignition propensities.

A 2006 survey of furniture manufacturers by Ciprus Limited provides information on consumption of cellulosic, thermoplastic, and leather covering materials in the production of furniture.[53] Using CPSC staff test data discussed above, the percentages of current production (as indicated by the Ciprus data) made with materials ranging from severely ignition-prone cellulosic fabrics to ignition resistant materials such as leather were estimated. These estimates are shown in column 1 of Table 2. The estimated percentage of upholstered items now made with severely ignition-prone cellulosic fabrics has fallen to 9.6 percent of annual production, from 12.0 percent estimated for furniture in use during 2002–2004. This is a 20 percent decrease in the relative use of the most ignition-prone class of fabrics. The use of other ignition-prone fabrics has also declined, in relative terms, while the use of generally ignition-resistant materials such as leather (estimated to be about 30 percent of current production) is 62 percent greater than found in household use in 2002–2004.

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[50] UFAC Class II and UFAC Class I/NBS Class D fabrics.

[51] NBS Class C cellulosic fabrics.

[52] Percent of total risk for each fabric type was calculated from estimates of market share and ignition propensity that were not rounded.

[53] Ciprus Limited, *op. cit.*

Table 2.

Cigarette Ignition Societal Costs and Estimated Benefits from Furniture Produced in a Year Under the 2007 Draft Standard

(in 2005 dollars)

Type of Upholstery Cover Material	(1) % of Annual Production	(2) Annual Units Produced	(3) Lifetime Societal Costs per Unit, Adjusted[1] (Table 1)	(4) Total Estimated Societal Costs[2] (million $) (2) x (3)	(5) Estimated Hazard Reduction	(6) Estimated Benefits per Unit (3) x (5)	(7) Total Estimated Benefits (million $) (2) x (6)
Severely Cigarette-Ignition-Prone Cellulosics	9.6%	2,934,901	$140.04	$411.0	79.8%	$111.80	$328.1
Moderately Cigarette-Ignition-Prone Cellulosics	4.6%	1,406,465	$86.60	$121.8	67.4%	$58.36	$82.1
Lower Cigarette-Ignition-Prone Cellulosics	10.8%	3,281,752	$28.24	$92.7	0%	$0	$0
Thermoplastics	44.8%	13,653,682	$4.06	$55.5	0%	$0	$0
Leather, wool, vinyl-coated	30.2%	9,223,200	**See note [3]**	**See note [3]**	0%	$0	$0
All Covering Materials	100.0%	30,500,000	$22.33	$681.0	--	$13.44	$410.2

[1] Based on a 3% discount rate; see Table 2a in Appendix A for calculations based on a 7% discount rate.

[2] Based on estimated annual production of 30.5 million pieces of upholstered furniture for household consumption.

[3] Based on limited testing data, leather, wool, and vinyl-coated fabrics are assumed to be highly resistant to ignition from cigarettes. Therefore, the societal costs associated with these covering materials are small but unknown.

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Column 2 of Table 2 shows the expected number of furniture units produced annually, by type of covering material, based on the market shares of the various fabric coverings (column 1) and an estimated 30.5 million furniture units produced. Column 3 provides the estimates of per unit lifetime societal costs derived in Table 1.

Based on current estimates of the types and quantity of furniture produced, the estimated total present value of the expected societal costs from cigarette fires is $681 million for furniture produced in a year, in the absence of a standard. (See column 4 of Table 2.) Total estimated societal costs involving furniture covered with severely ignition-prone cellulosic fabrics account for $411 million, or about 60 percent of the total. In contrast, thermoplastic fabrics, which are used to cover about 45 percent of all upholstered furniture produced, account for an estimated $55.5 million in societal costs, or only about 8 percent of the total.

A comparison of the ignition performance of upholstered chairs made with current fabrics with that of chairs made in compliance with the proposed standard would provide data to assess the likely reduction in ignition propensity that would result from the proposed standard. In the absence of such data, we can estimate the benefits of the standard by making reasonable judgments about improvements in ignition performance that would result from the use of complying materials.

Furniture currently manufactured with severely ignition-prone cellulosic fabrics could realize a reduction in societal costs per unit under the proposed standard to the equivalent of that now estimated for furniture covered by less ignition-prone cellulosic fabrics. This reduction would be attributable to improved ignition performance of fabrics or from the use of qualifying barriers. The reduction in lifetime societal costs per unit from $140.04 to $28.24 amounts to a hazard reduction of 79.8 percent (shown in column 5 of Table 2). We likewise assume that pre-standard societal costs estimated for moderately ignition-prone cellulosic fabrics (which are also expected to fail the proposed cover fabric test) would also likely fall to the level of estimated hazard costs associated with furniture covered with less ignition-prone fabrics. The estimated reduction from estimated lifetime societal costs of $86.60 to $28.24 would be a 67.4 percent reduction in the hazard presented (also shown in column 5). Since upholstered furniture items covered with less ignition-prone cellulosic fabrics and thermoplastic fabrics are expected to pass the proposed cover fabric test, and there are no requirements for filing materials under the proposed standard, furniture covered with those fabrics would not be expected to be associated with any reduction in their expected societal costs.

The estimated benefits per unit were calculated for each fabric class. (See column 6 of Table 2.) Per unit benefits of the proposed standard range from $0 for furniture covered with ignition-resistant fabrics such as thermoplastic or lower cigarette-ignition-prone cellulosics to an estimated $111.80 per unit for items currently covered by severely ignition-prone cellulosic fabrics. The benefits from ignition resistant materials such as leather, wool, and vinyl-coated fabrics are also expected to be $0.

The total estimated benefits of the proposed standard are calculated by multiplying estimated per unit benefits (shown in column 6) by the estimated annual units produced with each class of covering material (column 2). Based on these calculations, estimated benefits of the standard, in the form of expected lifetime reduction in societal costs associated with production of furniture in one year, discounted to their present value using a discount rate of 3 percent, total $410.2 million. About 80 percent of total estimated benefits are associated with the approximately 10 percent of furniture currently made with severely ignition-prone cellulosic fabrics.

As noted previously, OMB guidance to Federal agencies on the use of discounting in regulatory analysis recommends that future benefits (and costs) of federal regulations be presented using discount rates of 3 percent and 7 percent. Projected benefits from reductions in smoldering ignitions have an estimated present value of $309.1 million if future benefits are discounted at a 7% discount rate.

In addition to cigarette losses, the Directorate for Epidemiology estimated fire losses from small open-flame ignitions for the years 2002–2004.[54] During this time period, there were an average of 30 deaths and 170 nonfatal injuries annually from fires started by small open flames. There was also an average of about $50 million annually in property losses from small open flame-ignited fires during this time frame.[55]

Assuming a value of statistical life of $5 million,[56] the societal costs associated with the 30 deaths annually amounted to about $150 million. The 170 nonfatal injuries were assigned an average cost of $146,740 each,[57] resulting in societal costs of about $25 million. Adding in the $50 million annually in property losses from fires started from small open-flame ignition, the total annual costs of open-flame ignited fires addressed by the proposed standard amount to about $225 million ($150 million + $25 million + $50 million).

As in Table 1, these annual estimates of the open-flame losses are used to develop estimates of the lifetime societal costs of open-flame hazards per unit of furniture in use during 2002–2004, for each of the five fabric categories. The results are presented in Table 3.

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[54] Miller, David. *op. cit.*

[55] Estimated average property losses for 2002–2004 are expressed in 2005 dollars, based on changes in the Producer Price Index for construction materials.

[56] Viscusi, W. Kip, *op. cit.*

[57] Zamula, William W., *op. cit.* Injury costs are expressed in 2005 dollars.

Table 3.

Estimated Societal Costs from Small Open Flame Ignition of Upholstered Furniture for Furniture in Use During 2002-2004 *(in 2005 dollars)*

Type of Upholstery Cover Material	(1) % of Furniture in Use, 2002-2004	(2) Ignition Propensity	(3) Weighted Ignition Propensity (1) x (2)	(4) % of Overall Risk [1]	(5) Annual Societal Costs per Unit	(6) Lifetime Societal Costs per Unit [2]
Severely Cigarette-Ignition-Prone Cellulosics	12.0%	.93	.112	14.6%	$.61	$7.44
Moderately Cigarette-Ignition-Prone Cellulosics	5.8%	.93	.054	7.0%	$.61	$7.44
Lower Cigarette-Ignition-Prone Cellulosics	13.4%	.93	.125	16.4%	$.61	$7.44
Thermoplastics	50.2%	.94	.474	62.0%	$.62	$7.55
Leather, wool, vinyl-coated	18.6%	See note [3]	See note [3]	See note [3]	See note [3]	See note [3]

[1] The Percent of Overall Risk for each type of upholstery cover material (column 4) is calculated by dividing weighted ignition propensity (column 3) by the summation of the weighted ignition propensities (0.765).

[2] Based on a 3% discount rate.

[3] Based on limited laboratory testing data, leather, wool, and vinyl-coated fabrics are assumed to be highly resistant to ignition from small open flames. Therefore, ignition propensity of these materials is small, but unknown, as are the annual and lifetime societal costs per unit covered with these materials.

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Column 1 of Table 3 shows the proportions of furniture in each fabric material category, and is identical to the corresponding column in Table 1. Column 2 describes open-flame ignition propensities, based on small open flame ignition testing by the CPSC laboratory in 1996. In that testing, cellulosic and thermoplastic fabrics had nearly the same ignition propensity when subjected to a small flame for 20 seconds. Ignitions in 20 seconds or less were observed for 27 of 29 predominantly cellulosic fabrics (about 93 percent) and 17 of 18 predominantly thermoplastic fabrics (about 94 percent).[58]

Based on these ignition propensities and the estimated percentages of furniture in use comprised by upholstered items with cellulosic and thermoplastic fabrics, furniture covered with thermoplastic fabrics accounted for an estimated 62 percent of the overall risk of small open flame ignitions during 2002–2004; items covered with cellulosic fabrics accounted for an estimated 38 percent of the risk. While Table 3 separates cellulosic fabrics according to differences in their cigarette ignition propensities, for this analysis all cellulosic fabrics are assumed to have the same small open flame ignition propensity. The estimated percent of overall risk for each type of cellulosic fabric is, therefore, determined by market share. As with the risk of ignition by cigarettes, furniture covered by leather, wool, and vinyl-coated fabrics is assumed to be resistant to ignition from a 20-second exposure to a small open flame.

Following the same methodology described in Table 1, the average annual societal costs associated with small open flame ignitions of each fabric type were estimated by dividing the products of estimated percent of total risk and the total estimated average annual societal costs associated with small open flame ignition of furniture ($225 million) by the estimated number of units in use during 2002–2004 with each fabric type (447 million units in use × estimated market share). This approach resulted in estimated average annual societal costs of about $.62 for items covered with thermoplastic fabrics (62% × $225 million /447 million × 50.2%) and about $.61 for items covered with predominantly cellulosic fabrics (38% × $225 million/447 million × 31.2%). (See column 5 of Table 3.)

Finally, the lifetime societal costs (per unit of furniture) were estimated as the present value of the annual per unit societal costs over the expected product life of a furniture item. This present value estimate (shown in column 6), discounted at a rate of 3 percent, is about $7.55 for items covered with predominantly thermoplastic fabrics and $7.44 for items covered with predominantly cellulosic fabrics.

The estimated benefits associated with the prevention of open-flame fires are described in Table 4. The methodology is similar to that described for Table 2. Column 1 shows the current market shares, by fabric type, and Column 2 shows annual sales based on annual furniture shipments of 30.5 million units. Column 3 provides the estimates of per unit lifetime societal costs derived in Table 3, and Column 4 provides estimates of the aggregate societal costs of fires associated with open-flame ignition.

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[58] Based on testing data presented in Directorate for Laboratory Sciences memoranda dated October 3, 1996, through September 19, 1997, Tab D, ''Upholstered Furniture Flammability: Regulatory Options for Small Open Flame & Smoking Material Ignited Fires,'' October 24, 1997.

Table 4.

Small Open Flame Ignition Societal Costs and Estimated Benefits from Furniture Produced in a Year *(in 2005 dollars)*

Material	(1) % of Annual Production	(2) Annual Units Produced	(3) Lifetime Societal Costs per Unit[1] (Table 3)	(4) Total Estimated Societal Costs[2] (million $) (2) x (3)	(5) Estimated Hazard Reduction	(6) Estimated Benefits per Unit (3) x (5)	(7) Total Estimated Benefits (million $) (2) x (6)
Severely Cigarette-Ignition-Prone Cellulosics	9.6%	2,934,901	$7.44	$21.8	41% to 51%	$3.08 to $3.79	$9.0 to $11.1
Moderately Cigarette-Ignition-Prone Cellulosics	4.6%	1,406,465	$7.44	$10.5	0% to 25%	$0 to $1.86	$0 to $2.6
Lower Cigarette-Ignition-Prone Cellulosics	10.8%	3,281,752	$7.44	$24.4	0%	$0	$0
Thermoplastics	44.8%	13,653,682	$7.55	$103.0	0%	$0	$0
Leather, wool, vinyl-coated	30.2%	9,223,200	**See note [3]**	**See note [3]**	**See note [3]**	**See note [3]**	**See note [3]**
All Covering Materials	100.0%	30,500,000	$5.24	$159.8	--	$2.86	$9.0 to $13.8

[1] Based on a 3% discount rate; see Table 4a in Appendix A for calculations based on a 7% discount rate.

[2] Based on estimated annual production of 30.5 million pieces of upholstered furniture for U.S. household consumption.

[3] Based on limited testing data, leather, wool, and vinyl-coated fabrics are assumed to be highly resistant to ignition from small open flames. Therefore, the societal costs (and, hence, the potential benefits) associated with these covering materials are small but unknown.

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For the purposes of this analysis, we assume that about 40 percent of furniture currently manufactured with severely cigarette ignition-prone cellulosic fabrics (accounting for about 1.17 million units, or 3.8 percent of all furniture items) would be made with barrier materials. Complying barriers may reduce the open flame ignition hazards by about 90 percent, or $6.70 per unit, and benefits could total $7.9 million for furniture made with complying barriers.

Based on the assumption that 40 percent of severely cigarette ignition-prone cellulosic fabrics would be used with complying barriers, the remaining 60 percent of furniture currently manufactured with severely cigarette ignition-prone cellulosic fabrics (accounting for 5.8 percent of all furniture items) and the 4.6 percent of fabric yardage that is moderately cigarette ignition prone (combining for nearly 3.2 million units) would require other modifications or they would have to be dropped from use as upholstery cover materials. The methods of compliance chosen by manufacturers likely would affect the level of reduction in open flame ignition hazards. The implications of these decisions are discussed below.

Fabrics that do not pass the upholstery cover fabric smoldering ignition resistance test could be brought into compliance through treatments with FR chemicals. FR treatment of fabrics and filling materials to achieve compliance with the staff's 2005 draft standard might result in a 50 percent reduction in small open flame fire losses.[59] However, unlike the 2005 draft standard, the current proposed standard does not include provisions related to open flame ignition performance of filling materials, which in many cases would have required FR treatments to achieve compliance. Lacking this additional contribution to fire-retardance, the effectiveness of FR fabric treatments under the proposed standard at reducing the small open flame fire hazard probably would be lower. Consequently, the hazard reduction for furniture with FR-treated fabrics may be about 25 percent under the proposed standard. Per unit open flame ignition benefits would be about $1.86, and aggregate open flame benefits would be about $5.9 million, if manufacturers resort to FR treatment for all of the nearly 3.2 million units. From the standpoint of fabric type, the average hazard reduction for severely cigarette ignition-prone cellulosic fabrics would be 51 percent,[60] and the reduction for moderately cigarette ignition-prone cellulosic fabrics would be 25 percent. (See column 5 of Table 4.)

Alternatively, manufacturers would have the options of using fabrics that are reformulated with different fibers or dropping non-complying fabrics from use as furniture covers. In fact, this may be the preferred option for most manufacturers, given concerns with costs, FR exposure, aesthetic effects, and other issues. Open flame benefits would not be expected for such furniture items. If the use of FR-treatments of fabrics is 80 percent lower than assumed above, the number of units made with FR-treated fabrics would total about 630,000 and aggregate open flame benefits from furniture using FR-treated fabrics would be about $1.2 million, and total open flame benefits would be about $9 million. If all 630,000 units with FR fabric treatments involved severely cigarette ignition-prone fabrics, the average estimated hazard reduction for that category of fabrics would be about 41 percent.[61]

Based on the assumed range of furniture units that would be made with FR-treated fabrics, aggregate open flame benefits from the proposed standard range from about $9 million to $13.8 million, as shown in column 7 of Table 4. In accordance with OMB guidance that future benefits (and costs) of federal regulations be presented using discount rates of 3 percent and 7 percent, open flame benefits of the proposed standard have also been estimated to have a present value of $6.4 million to $9.9 million if future benefits are discounted at a 7 percent discount rate.

6. Expected Costs of the Proposed Standard

a. Costs Related to Upholstery Fabrics and Barrier Materials

Upholstery fabric and FR treatments. This section of the analysis presents information about the expected resource costs associated with the proposed standard. These costs include manufacturing costs incurred for materials, labor, testing, and recordkeeping, and distribution costs to wholesalers, distributors, and retailers. The estimates are expressed in 2005 dollars (as were estimated benefits). Cost estimates are limited to upholstered household furniture that may commonly be found in living rooms and family rooms. A relatively small number of other types of chairs that fall within the scope of the standard, such as a small percentage of dining chairs and desk chairs purchased by consumers, are excluded from this analysis.[62] Cost estimates are summarized in Table 5.

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[59] Smith, Charles, Directorate for Economic Analysis, CPSC, Preliminary Regulatory *Analysis of a Draft Proposed Flammability Rule to Address Ignitions of Upholstered Furniture,* November 2007.

[60] Based on 25% effectiveness x 60% of the fabrics being FR-treated and 90% x 40% that are made with barriers.

[61] Based on 25% effectiveness x 21.6% of the fabrics being FR-treated and 90% x 40% that are made with barriers.

[62] Those other items probably would incur relatively minor increases in costs because of the types of materials used, and smaller material requirements per unit of furniture.

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Table 5.
Estimated Increase in Manufacturing Costs from the Staff's 2007 Draft Standard
(2005 Dollars)

Upholstery Covering Materials	Manufacturing Cost Increases per Unit, by Material Affected		(3) Compliance Verification Costs per Unit	(4) Distribution Costs per Unit	(5) Range of Total Costs Per Unit	(6) Annual Units Produced	(7) Aggregate Costs (million $)
	(1) FR Fabric	(2) Barriers			(Average)	(% of Total)	(midpoint)
Severely Cigarette-Ignition-Prone Fabrics	$6.61 to $11.28 (60% of type)	$15.90 to $22.05 (40% of type)	$0.10	$1.04 - $1.57	$11.47 to $17.26 ($14.36)	2,934,901 (9.6%)	$33.7- $50.7 ($42.2)
Moderately Cigarette-Ignition-Prone Cellulosic Fabrics	$6.61 to $11.28	n/a	$0.10	$0.67 - $1.14	$7.38 to $12.52 ($9.95)	1,406,465 (4.6%)	$10.4- $17.6 ($14.0)
Lower Cigarette-Ignition-Prone Cellulosic Fabrics	n/a	n/a	$0.10	$0.01	$.11	3,281,752 (10.8%)	$0.4
Thermoplastic Fabrics	n/a	n/a	$0.10	$0.01	$.11	13,653,682 (44.8%)	$1.5
Ignition Resistant Materials	n/a	n/a	$0.10	$0.01	$.11	9,223,200 (30.2%)	$1.0
Note: Estimates are based on assumption that all "Moderately Cigarette-Ignition-Prone Cellulosic fabrics" and 60% of "Severely Cigarette- Ignition-Prone Fabrics" (accounting for a combined 3.2 million units) would be FR-treated in order to comply with the draft standard. If reliance on FR-treatment would be reduced by 80%, an estimated 633,000 units would have FR fabric. Total estimated aggregate costs would be about $34 million annually.						30,500,000	$47.0 - $71.2 ($59.1)

Fabrics failing the fabric test of the proposed standard could be treated with FR chemicals or be reformulated with fibers that enable passing results. Manufacturers would also be able to continue using fabrics without modifications if they use an acceptable barrier material (i.e., one that passes the proposed barrier tests) between the fabric and filling materials. For purposes of this analysis, the highly cigarette ignition-prone fabrics and moderately cigarette ignition-prone fabrics, estimated to combine for about 14.2 percent of total upholstery cover materials, are assumed to require modifications if their use is to continue under the proposed standard. As discussed previously, these modifications could include the use of FR treatments or barriers, or reformulating the fabrics in a way (such as increasing the thermoplastic fiber content) that will allow the fabrics to pass the smoldering test of the proposed standard.

Based on fabrics that have been tested by the CPSC laboratory, many of the fabrics that would fail the fabric test of the proposed standard are heavier weight (over eight ounces per square yard) fabrics that are made entirely of cellulosic fibers, such as cotton or rayon. Many of these fabrics could be treated with FR chemicals to enable them to pass the fabric test. Typically, fully upholstered chairs require about 7 linear yards of fabric, and sofas require 11 to 15 yards, depending on factors such as the need to match patterns (which results in more fabric waste in pattern cutting). The average increase in fabric costs could range from $.62 to $1.05 per linear yard for manufacturers, based on previous estimates for FR backcoating to achieve resistance to ignition from small open flames.[63] Also, although the proposed standard does not specify frequency of testing to assure compliance of treated fabrics with the fabric test, we assume that testing will be done to provide guaranties to furniture manufacturers. This testing could increase fabric costs an additional $.03 to $.06 per linear yard of fabric, on average. Therefore, total average manufacturing cost increases for furniture made with FR-treated upholstery fabrics under the proposed standard could range from $4.55 to $7.77 for chairs and $8.45 to $14.43 for sofas and loveseats.[64] Considering estimates of unit shipments of chairs and sofas (based on an analysis of Department of Commerce Economic Census data), the average manufacturing cost increase per item of furniture resulting from FR treatments of fabric is estimated to range from $6.61 to $11.28.[65] (See column 1 of Table 5.)

Barrier materials. Some furniture manufacturers may choose to offer fabrics that do not pass the fabric classification test by using an acceptable barrier material under the cover fabric. Based on barriers used in the UK to comply with the barrier test of that country's furniture flammability standard, the cost to manufacturers could range from $2.00 to $2.47 per linear yard (reportedly 54 to 59 inches in width) for standard FR barriers, and about $2.67 to $2.94 per linear yard for down-proof barriers (i.e. having yarns and weaves suitable for encasing down).[66] As with FR-treated cover fabrics, testing would be done to assure compliance with the barrier test of the proposed standard. However, given expected large production runs of barriers and the greater degree of uniformity of barrier materials compared to cover fabrics, additional testing costs to furniture manufacturers could be about $.01 per yard of barrier fabric.

The decision to use barriers as a means to comply with the standard is more likely to be taken by firms that serve the upper-end furniture market. These furniture items are more likely to be manufactured with interior fabrics between the cushioning materials and the upholstery covers. In a 1995 survey of furniture manufacturers, the CPSC found that about one-third of the seat, arm and back cushions were made with interior fabrics. Interior fabrics were used in an average of about 50 percent of cushions made by smaller firms, which are more likely to serve the upper-end market. To the extent that manufacturers already enclose filling materials in interliner fabrics, the FR barriers could be replacing untreated materials.

Cushions are usually purchased from fabricators that make them to the specifications of the furniture manufacturers. For seat cushions, the barrier alternative would result in a change in the interior fabric used by the cushion fabricators. For such items, barrier costs would be offset by the costs of the untreated materials, about $.30 per yard for standard interliner fabrics and $.80 per yard for down-proof interliner fabrics. Net increases in material costs, including costs for testing, would be about $1.71 to $2.18 per yard for standard fabrics and $1.88 to $2.15 per yard for down-proof fabrics. Cushions typically have sides that are about 24 inches long, and they are about 5 inches thick. Therefore, about one linear yard of 54-inch wide interior fabric would be used per seat cushion, and the cost increases per linear yard of material would also hold true for cost increases per cushion.

Barrier materials required for other parts of the seating areas of furniture items might require about two yards of material per chair and four yards per sofa. These areas may be less likely to have interliner fabrics currently than is the case with seat cushions. Therefore, increased material costs probably would be $2.01 to $2.48 per linear yard for standard FR barriers. These materials would increase material costs by about $4.02 to $4.96 for chairs and $8.04 to $9.92 for sofas. Adding the approximately $1.71 to $2.18 per cushion material cost increases from substituting the use of FR barriers for standard interliner materials, total increased material costs might be about $5.73 to $7.14 for chairs and $13.17 to $16.46 for sofas.

In addition to increased material costs, manufacturers would also be faced with additional costs related to labor needed to include FR barriers on parts of the upholstered items that are not currently made with interliner fabrics or battings. The additional labor required might average about 15 to 20 minutes per item.[67] Hourly labor costs, including benefits, are estimated to range from about $25 to $30.[68] Therefore, labor costs for the additional upholstery work could be about $6.25 to $10.00. Total increases in

[63] Smith, Charles. Directorate for Economic Analysis, CPSC, *Economic Analysis of Regulatory Options to Address Small Open Flame Ignitions of Upholstered Furniture,* October 2001. Note: Bureau of Labor Statistics reports virtually no change in Producer Price Index for job or commission finishing of cotton broadwoven fabrics from 2001–2005. Therefore, previous estimates are used in this analysis.

[64] Assuming average fabric yardage for sofas and loveseats is 13 linear yards.

[65] We estimate that in 1997, upholstered living room and family rooms furniture purchased for consumer use was comprised of about 15.6 million sofas, sofabeds, and loveseats (52.7%), and 14.0 million chairs (47.3%). Therefore: ($4.55 × 47.3%) + ($8.45 × 52.7%) = $6.61; and ($7.77 × 47.3%) + ($14.43 × 52.7%) = $11.28.

[66] Smith, Charles. *op. cit.*

[67] Based on a telephone conversation between a representative of Vanguard Furniture, and Charles Smith, Directorate for Economic Analysis, CPSC, on February 23, 2001.

[68] Although the Bureau of Labor Statistics National Compensation Survey reports that average upholsterer wages for the Hickory-Morganton-Lenoir, NC area were $17.03 per hour in 2005, we assume that wages and other labor costs are typically higher ($25-$30) for upholsterers that work for manufacturers using expensive decorative fabrics (which are more likely to be used with barrier materials). This assumption is supported by labor cost information provided by Vanguard Furniture, op. cit.

manufacturing costs (material and labor) are estimated to range from $11.98 to $17.14 for chairs and $19.42 to $26.46 for sofas and loveseats. The average increase in manufacturing costs per item of upholstered furniture that would be made with FR barriers is estimated to range from $15.90 to $22.05.[69] (See column 2 of Table 5.)

As noted above, highly cigarette ignition-prone fabrics, estimated to comprise 9.6 percent of total upholstery cover materials, could require the use of FR treatments or barriers if their use is to continue under the proposed standard. The use of barriers is more economically feasible with more expensive fabrics, such as those produced by members of the Decorative Fabrics Association (DFA). The DFA estimates that fabrics marketed by its members comprise perhaps 1.5 percent of total upholstery fabric yardage used to make furniture.[70] If 40 percent of highly cigarette ignition-prone fabrics (3.8% of all upholstery cover materials, i.e., more than just the 1.5 percent of fabric yardage reportedly marketed by DFA members) are assumed to be used with acceptable barrier materials under a standard, about 1.17 million furniture pieces annually might be made with barriers under a standard. The aggregate manufacturing cost increase related to use of complying barrier fabrics under these assumptions would range from about $18.7 million to $25.9 million.[71] If 60 percent of highly cigarette ignition-prone fabric yardage (covering 5.8% of all furniture items) is assumed to be treated with FR chemicals, the estimated aggregate increase in manufacturing costs from FR treatment of fabrics would range from $11.6 million to $19.9 million annually.[72] The combined aggregate costs of fabric treatments and barriers would total $30.3 million to $45.7 million annually.

In addition to costs associated with furniture covered with severely cigarette ignition-prone cellulosic fabrics, fabrics that are moderately cigarette ignition-prone could also be expected to require modifications in order to comply with the proposed standard's smoldering ignition test for cover materials. If these units (accounting for an estimated 4.6% of current furniture purchases by consumers) are also made with FR fabric treatments, material costs per unit would increase by $6.61 to $11.28, for an increase in estimated aggregate costs ranging from $9.3 million to $15.9 million annually. Total estimated material cost increases related to FR treatment of fabrics or the use of complying barriers would, therefore, range from about $39.6 million to $61.6 million annually.

It should be noted that these cost estimates could be considered to be the upper bound for material costs of the proposed standard, since manufacturers would have the less expensive alternative of substituting upholstery fabrics that pass the smoldering requirements for those that do not, without the application of FR chemicals or the use of barrier materials. If choosing these options were to reduce reliance on FR-treatments of fabric by 80 percent from that assumed in the above analysis, FR-treatment costs under the proposed standard could total about $6.3 million annually. Under this assumption, an estimated 2.1 percent of furniture items would be made with FR-treated fabrics; 3.8 percent would be made with barrier materials, and; 8.3 percent would be units in which fabrics were reformulated with more ignition-resistant fibers or otherwise switched to fabrics/covers that comply without treatments or barriers. In this scenario, aggregate costs of FR-treatment of fabrics and the use of barriers would be about $30.8 million.

b. Costs Related to Compliance Verification

Costs related to compliance verification will result from requirements placed on furniture manufacturers to maintain records and to apply a permanent label to the items.[73] Other resource costs of compliance verification include the costs of compliance and enforcement activities undertaken by CPSC staff. For purposes of this analysis we assume compliance verification costs of about $.10 per furniture unit. (See column 5 of Table 5.)

c. Distribution Costs

An additional cost of the proposed standard could be increases in costs to wholesalers, distributors, and retailers in the form of added storage, transportation, and inventory financing costs. Since furniture items that would be produced under the standard are not likely to be larger or heavier than pre-standard items, added storage and transportation costs are likely to be negligible. However, inventory financing costs will increase by the average cost of borrowing money, applied to the increase in the wholesale price of a furniture item over the average inventory holding time period. Since most furniture producers use just-in-time production and have small inventories of finished items, this additional cost will probably not exceed 10 percent of the increase in manufacturing costs. A 10 percent markup, therefore, is being used to measure these distribution costs. This yields a resource cost to the firms in the distribution chain averaging about $0.67–$1.14 per furniture item made with FR-treated fabrics and $1.60 to $2.22 per item made with barriers. The weighted range of estimated resource costs for furniture made with severely cigarette ignition-prone fabrics is $1.04 to $1.57 per unit of furniture.[74] (See column 4 of Table 5.) Aggregate costs associated with estimated increased inventory financing costs range from $4.2 million to $6.4 million annually. As discussed in Section 7 of this analysis, the proposed standard may lead to increases in retail prices of furniture greater than the 10 percent markup.

d. Summary of Expected Costs

Table 5 summarizes the results of the cost analyses. It illustrates the differing costs estimated to be incurred under the standard by furniture items covered with the different classifications of upholstery materials previously discussed in the societal costs and benefits section of this analysis. The estimated 14.2 percent of furniture items covered by severely and moderately cigarette-ignition-prone cellulosics would incur greater total and per unit costs under the proposed standard. We assume these fabrics would fail the upholstery cover fabric smoldering ignition resistance test of the proposed standard. Therefore, their continued use in furniture production would require the use of barrier materials that pass the barrier test of the proposed standard or other treatments. Furniture items covered with other types of upholstery materials should not require FR-treated fabrics or barriers. However, all units would incur minor compliance verification costs.

[69] We estimate that in 1997, upholstered living room and family rooms furniture purchased for consumer use was comprised of about 15.6 million sofas, sofabeds, and loveseats (52.7%), and 14.0 million chairs (47.3%). Therefore: ($11.98 × 47.3%) + ($19.42 × 52.7%) = $15.90; and ($17.14 × 47.3%) + ($26.46 × 52.7%) = $22.05.

[70] Information provided to the staff at a June 29, 2000, public meeting.

[71] (30.5 million units × 3.8% × $15.90) = $18.7 million; (30.5 million units × 3.8% × $22.05) = $25.9 million.

[72] (30.5 million units × 5.8% × $6.61) = $11.6 million; (30.5 million units × 5.8% × $11.28) = $19.9 million.

[73] Costs related to production testing are incorporated in the estimated material costs of the draft standard.

[74] Based on the assumption that 60% of these units will use FR-treated fabrics and 40% will use barriers.

Based on the estimated increases in manufacturing costs associated with changes in fabrics and the use of barriers, costs of compliance verification, and distribution costs, aggregate costs under the proposed standard are estimated to range from about $47 million to $71 million annually. The midpoints of the estimated ranges of costs total $59.1 million. As noted above, since changes in fiber contents of fabrics or dropping fabrics from selections offered by manufacturers will be an option available to manufacturers, the aggregate manufacturing costs related to FR treatments and barriers could be lower. Under an alternative assumption that the reliance on FR treatments of fabrics will be 80 percent lower, aggregate costs of the proposed standard would be about $34 million for one year's production of complying furniture.

7. Comparison of Costs and Benefits

a. Benefits and Costs of Proposed Standard

The expected benefits of the proposed standard, which will vary depending on the cigarette ignition propensity of the upholstery cover material used, were discussed in Section 5 of this analysis (and shown in Tables 2 and 4) and are summarized in Table 6. Table 6 shows the estimated benefits (per unit of furniture) in columns 1, 2, and 3. The benefits associated with bringing furniture pieces now covered with severely cigarette ignition-prone cellulosic fabrics into compliance are estimated to range from $114.88 to $115.59 per unit (comprised of $111.80 from reduced losses from furniture fires started by cigarettes and $3.08 to $3.79 from reduced losses from fires started by small open flames). The projected benefits resulting from modifications to furniture covered with moderately cigarette ignition-prone cellulosic fabrics range from $58.36 to $60.22 per unit. For both groups of fabrics the range in benefits is attributable to the effect of different assumptions of use of FR fabric treatments on open flame ignition benefits. Other types of covering materials are not expected to be associated with either cigarette or open flame benefits, since no modifications to fabrics or filling materials would be required to comply with the proposed standard.

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Table 6.

Estimated Costs and Benefits of the 2007 Draft Standard*

(Per Unit and Aggregate for Production in One Year, in 2005 Dollars)

Type of Upholstery Cover	Projected Benefits Per Unit, by Source of Ignition			(4)	(5)	(6)	(7)	(8)
	(1) Cigarettes	(2) S.O.F.[1]	(3) Total[1] Benefits	Costs Per Unit[1]	Net Benefits per Unit[1]	Annual Units Produced (% of Total)	Total Net Benefits[1] (million $)	Cumulative[1] Net Benefits (million $)
Severely Cigarette Ignition-Prone Fabrics	$111.80	$3.08 to $3.79	$114.88 to $115.59	$10.58 to $14.36	$101.23 to $104.30	2,934,901 (9.6%)	$297.1 to $306.1	$297.1 to $306.1
Moderately Cigarette Ignition-Prone Cellulosic Fabrics	$58.36	$0 to $1.86	$58.36 to $60.22	$.11 to $9.95	$50.27 To $58.25	1,406,465 (4.6%)	$70.7 to $81.9	$367.8 to $388.0
Lower Cigarette Ignition-Prone Cellulosic Fabrics[2]	$0	$0	$0	$.11	($0.11)	3,281,752 (10.8%)	($0.4)	$367.4 to $387.6
Thermoplastic Fabrics[2]	$0	$0	$0	$.11	($0.11)	13,653,682 (44.8%)	($1.5)	$365.9 to $386.1
Ignition Resistant Materials[2]	$0	$0	$0	$.11	($0.11)	9,223,200 (30.2%)	($1.0)	$364.9 to $385.1

[1] The ranges in estimated small open flame ignition benefits, costs per unit, and net benefits are attributable to different assumptions regarding use of FR fabric treatment as the chosen method of compliance.

* Present value estimates of future benefits are based on a 3 percent discount rate; see Table 6a in Appendix A for calculations based on a 7 percent discount rate.

[2] For purposes of the analysis, it was assumed that these categories of fabrics would comply with the proposed standard without modification. However, some fabrics or materials in these categories could contribute to the risk in some measure, and the categories cannot be sufficiently defined to be able to exclude such materials from the proposed standard's testing, recordkeeping and labeling provisions (and their associated costs).

Table 6 also shows (in column 4) the midpoints of the ranges of estimated per unit costs of compliance with the proposed standard, which were discussed in Section 6 of this analysis. Estimated costs per unit of furniture covered with severely and moderately cigarette ignition-prone cellulosic fabrics are expressed as ranges based on different assumptions of the extent to which FR treatment would be used to achieve compliance. The higher cost estimates reflect the midpoint of costs estimated using an assumption that all of the affected fabrics are either FR treated or used with complying barriers. The lower cost estimates assume that reliance on FR treatments is reduced by 80 percent, as manufacturers comply through fabric fiber reformulation or dropping noncomplying fabrics from use as upholstery covers.

Table 6 also shows aggregate and cumulative net benefits associated with the proposed standard. The total net benefits shown in column 7 are the product of per unit net benefits and number of units produced annually by type of cover material. For example, the total estimated net benefits from furniture covered with moderately cigarette ignition-prone cellulosic fabrics range from $70.7 million to $81.9 million, given by the product of 1.4 million units produced and per unit net benefits of $50.27 to $58.25. The cumulative net benefits (shown in column 8 of Table 6) are calculated by the vertical summation of the ''Total Net Benefits'' column. Total net benefits of the proposed standard are estimated to range from $364.9 million to $385.1 million.

As noted in Table 6 and in previous sections of this analysis on benefits, expected benefits accruing in future years have been discounted to their present value using a 3 percent discount rate to reflect society's time preference. In accordance with OMB guidelines on benefits calculations, calculations have also been made using a 7 percent discount rate. Using this higher rate, total net benefits of the proposed standard are estimated to range from about $260 million to $281 million over the life of complying upholstered furniture produced in a year.[75] Analyses using both discount rates assume that manufacturers would use FR treatments in a manner that poses no additional risk of injury or adverse health effects to consumers.

[75] Aggregate benefits ranging from about $316 million to $319 million minus aggregate costs ranging from about $34 million to $59 million (midpoint of range).

b. Sensitivity Analysis

The previous discussion compares benefits and costs of the proposed standard using discount rates of 3 percent and 7 percent to express expected benefits accruing in the future in their present value, an estimated value of a statistical life of $5 million, and an estimated average cost of injury of $146,740. Net benefits were also estimated based on estimated increases in costs of producing and marketing furniture that complies with the proposed standard. In addition to these factors, the estimation of benefits was based on assumptions regarding the effectiveness of the standard at reducing losses from cigarette and small open flame ignitions. This section examines the effect of changing any of these assumptions on the expected net benefits that would result from compliance with the proposed standard. In all cases, the estimated net benefits of the proposed standard remain positive.

Discount rates of 3 percent and 7 percent were used to express expected benefits accruing in the future in their present value. Using a 3 percent rate, total estimated benefits of the standard range from about $419 million to $424 million, the range of estimated total costs is about $34 million to $59 million, and total estimated net benefits range from about $365 million to $385 million. Using a 7 percent discount rate, the present value of benefits would range from about $316 million to $319 million, and total net benefits would range from about $260 million to $281 million.

Estimated benefits of the proposed standard were based on a value of a statistical life of $5 million. If benefits are calculated based on a lower bound of $3 million as the value for a statistical life,[76] total estimated benefits of the standard would range from about $267 million to $270 million using a 3 percent discount rate and about $201 million to $203 million using a 7 percent discount rate. Total estimated net benefits would range from about $211 million to $233 million using a 3 percent discount rate and $144 million to $167 million using a 7 percent discount rate. Alternatively, if a value of $7 million is assigned to a statistical life, the total estimated benefits would range from about $572 million to $578 million (at a 3% discount rate) and about $430 million to $435 million (at a 7% discount rate) and total estimated net benefits would range from about $519 million to $538 million (at a 3% discount rate) and $376 million to $396 million (at a 7% discount rate).

[76] Viscusi, W. Kip. *op. cit.*

Estimated benefits of the proposed standard are based on an average societal cost of $146,740 per injury. Changing the estimate used for the cost of injury will have minimal impact on the results, because the share of benefits from reduced injuries is less than 4 percent of total benefits. Hence, even if there were no reduction in injuries from the proposed standard, the total estimated benefits would be about $404 million to $409 million and total net benefits would be $350 million to $370 million using a 3 percent discount rate. Using a 7 percent discount rate, estimated benefits would range from about $305 million to $308 million and estimated net benefits would range from about $249 million to $271 million.

Section 6 of this analysis addresses the expected costs of the standard. Estimates of costs are based on judgments regarding changes to materials that will be required to meet performance tests of the proposed standard, the costs of those changes per unit, and the number of affected furniture items produced annually. Based on the midpoints of ranges of estimated cost impacts of material changes, and different assumptions of reliance on FR fabric treatments as a means to compliance, aggregate costs of the standard were estimated to be $34 million to $59 million for annual production of upholstered household furniture. With these costs, total estimated net benefits of the proposed standard range from about $365 million to $385 million using a 3 percent discount rate and $260 million to $281 million using a 7 percent discount rate. Even if we assume that the costs of the standard are twice those estimated in Section 6 (i.e., $68 million to $118 million) the standard would still have estimated net benefits ranging from about $306 million to $351 million from annual production of upholstered furniture if future benefits are discounted at 3 percent, and about $190 million to $237 million if a 7 percent discount rate is used.

Estimated benefits of the proposed standard were based on assumptions regarding the effectiveness at reducing societal costs of cigarette and small open flame ignitions of furniture. However, if we assume that the standard will have one-half the effectiveness that our estimated benefits are based upon, aggregate benefits would still range from about $210 million to $212 million, and net benefits would range from about $153 million to $176 million, using a 3 percent discount rate. Using a 7 percent discount rate, estimated benefits would

range from about $158 million to $160 million, and net benefits would range from about $100 million to $124 million.

c. Impact of the Proposed Standard on Retail Prices

The estimated costs of the proposed standard include the increased costs of materials, labor, and distribution directly attributable to the rule. It is likely that manufacturers will pass on at least some of the costs of complying with the standard to the consumer, in the form of higher retail prices. The actual increase in retail prices will depend on the price elasticity of demand for furniture products (i.e., the responsiveness of quantity demanded to the change in price). If demand is highly price elastic, then manufacturers will experience a relatively large decrease in sales of upholstered furniture products in response to a price increase, and their ability to pass on increased regulatory costs to the consumer is limited. If demand is price inelastic, consumers respond less intensely to price increases, enabling producers to successfully pass through cost increases.

Regarding the market for upholstered furniture, it is anticipated that demand is relatively price elastic in the short run, because consumers can usually postpone the purchase of a durable good. Increases in retail prices are thus likely to be limited. In the long run, demand is less elastic and any attempt to pass through increased costs is more likely to succeed. Consequently, increases in retail prices are more likely to be observed.

In the absence of information on the price elasticity of demand for upholstered furniture products, it is possible to make use of traditional industry markup rates to provide an upper bound estimate for retail price increases. Such estimates may be viewed as upper bound estimates because they do not reflect the price elasticity of demand. Moreover, traditional markups do not factor in the role of competition, which can also influence attempts to increase prices. Rather, the markup simply reflects the price that producers will want to charge based on historical accounting costs. As noted above, an increase in price will result in a reduction in sales and in the case of highly elastic demand, revenues will decline as well, which will tend to moderate attempts to increase retail prices.

According to industry sources, higher production costs for materials and labor could result in retail prices that are higher by a factor of 2.5, or 150 percent. Based on this markup, the average retail price impact of the proposed standard on furniture items made with FR treated fabrics could be about $23 (for perhaps 2 to 10 percent of all items), and the average retail price impact for furniture produced with barrier materials could be about $48 (for perhaps 4% of furniture items). The average retail price impact for furniture that will not be made with FR fabric treatments or barriers under fabrics (perhaps 86 to 94% of units), could be under $1 per unit. The average increase in retail prices for all upholstered furniture is estimated to be less than $5 per item, based on the traditional industry markup rates.

8. Alternatives to the Proposed Standard

a. The Staff's 2005 Draft Standard

The aggregate benefits of the staff's 2005 draft standard (i.e., the reduction in the societal costs associated with complying furniture), based on the annual sales of a little over 30 million furniture items, are expected to be about $597 million. Total aggregate costs of the 2005 draft standard for each year's production are estimated to range from about $167 million to $184 million, with a midpoint of about $176 million. Although the 2005 draft standard would be expected to increase the use of FR chemicals in the production of urethane foam cushioning and fabrics to achieve compliance, estimates assumed that these chemicals would be selected and used in a way that would not lead to appreciable societal costs. If the use of these chemicals would have adverse health or environmental impacts, the costs of the 2005 draft standard are understated. Estimated benefits and costs per unit would vary greatly depending on cover materials. Most units would incur costs related to FR-treatment of filling materials, and an estimated 10 percent of units covered with more ignition-prone fabrics would require modifications (FR-fabric treatment or FR barriers) that would lead to higher costs of compliance. Projected annual net benefits to society from the staff's 2005 draft standard total $421.5 million. A sensitivity analysis of several factors (value of life, injury costs, effectiveness, and costs) showed that alternative assumptions still yield substantially positive net benefits.

b. The Draft Small Open Flame Ignition Standard

As an alternative to the proposed standard, the Commission could adopt the standard drafted by CPSC staff in 2001 that focused on small open flame ignition of upholstered furniture. That draft standard was the subject of a staff briefing package submitted to the Commission in October 2001. Compliance with the draft small open flame standard would require the use of upholstery cover materials that do not sustain combustion following exposure to a small flame for 20 seconds, or, alternatively, the use of materials that would pass an open flame barrier test. The staff estimated that most fabrics would fail the 20-second flame test unless they would be treated with FR chemicals. Although the FR treatments under that standard specifically addressed small open flame ignition hazards, CPSC staff testing data also showed substantial improvement in cigarette ignition resistance. In fact, most of the estimated benefits of the small open flame standard were projected to result from reductions in societal losses from cigarette ignitions.

Based on estimated costs of compliance and estimated reductions in both small open flame and cigarette ignition hazards, adoption of the 2001 draft small open flame standard would result in estimated aggregate benefits totaling $651 million and aggregate costs of about $272 million from annual production of about 30.5 million pieces of upholstered furniture.[77] Therefore, estimated aggregate net benefits of the small open flame standard would be $379 million. This compares with estimated net benefits of $365 million to $385 million for the proposed standard.[78]

While the estimated net benefits of the proposed standard are relatively close to those estimated for the staff's 2001 draft small open flame standard, the costs associated with the proposed standard are substantially less. In fact, the estimated costs of the proposed standard (ranging from $34 million to $59 million) are 78 to 87 percent lower than the costs of the 2001 draft ($272 million). The difference is related, in large part, to the reduced level of treatment of upholstery fabric with FR chemicals. Unlike the proposed standard, which would result in the treatment of perhaps 2 to 10 percent of

[77] Smith, Charles, 2001 *op. cit.* Based on ''Best Estimates'' of reductions in ignition propensity and midpoints of estimated increases in manufacturing costs; as with the current analysis, distribution costs are estimated to be an additional 10 percent. The best estimate for cigarette ignition reduction involving cellulosic fabrics is 75%, based on 2003 estimates made by Mark Levenson, EPHA, CPSC.

[78] The net benefits of the staff's 2007 draft standard may also be underestimated. The difference does not take into account the likely heavier (and hence more costly) loadings of FR chemicals that would be needed to meet the 20-second open flame test of the alternative 2001 draft open flame standard. (For purposes of comparison, the FR treatment costs between these two alternatives were assumed to be the same.)

upholstery fabric coverings, nearly 66 percent of the upholstery covers would likely receive FR treatments to pass the 20-second open flame test of the CPSC staff's 2001 draft standard.

It should also be noted that retail price impacts of the proposed standard, reflecting the lower underlying costs, would also be substantially lower than under the staff's 2001 small open flame draft standard. Increases in the retail price of furniture may have some negative impact on sales. Higher prices may lead some consumers to delay the purchase of new furniture or lead them to buy it less frequently, and could potentially result in secondary impacts on the sales of furniture components and industry employment; such effects are likely to be more pronounced in the short run. While the impact of these price increases cannot be predicted with certainty, the higher costs of the 2001 open flame standard would likely have more pronounced effects. Additionally, while the retail price impact of the proposed standard will tend to fall most heavily on generally more expensive furniture items (i.e., those with the more expensive cellulosic fabrics), the alternative open flame standard would fall disproportionately on the more inexpensive furniture with thermoplastic fabrics, the fabrics less prone to cigarette ignition.

Finally, while FR chemicals could be used under both the proposed standard and the 2001 draft open flame standard, usage under the draft small open flame standard is likely to be much greater. Under the 2001 open flame standard the staff estimated that up to about 300 million linear yards of fabric could be FR-treated annually. Under the proposed standard, however, an estimated maximum of 65 million yards could potentially be treated.[79]

c. A Mandatory Standard Based on the UFAC Voluntary Program

As an alternative to the proposed standard, the Commission could adopt the provisions of the UFAC Voluntary Action Program as a mandatory standard. The Upholstered Furniture Action Council, or UFAC, was formed by major furniture industry associations in 1974, largely as a response to prospective CPSC actions on upholstered furniture. The UFAC Voluntary Action Program was developed in the late 1970's and amended as ''Phase 2'' in 1983. Tests for decorative trim were added to the program in 1993. The program requires classification of upholstery cover fabrics into either ''Class I'' or ''Class II,'' based on a cigarette ignition performance test. All conforming furniture must comply with specified construction criteria for welt cords, decking substrates, filling materials, and interior fabrics; and more cigarette ignition-prone Class II fabrics used with polyurethane foam seat cushions must have a barrier material between the fabric and foam that passes a barrier smoldering performance test. Conforming furniture is to be labeled with a UFAC tag.

The staff's last market evaluation of UFAC conformance was conducted in 1996. At that time, based on ignition testing of chairs purchased by the CPSC, the staff estimated that about 90 percent of upholstered furniture may have been produced in conformance with the UFAC program (including a majority of units produced by firms that did not participate in the UFAC program). Although the UFAC program is designed to prevent the use of furniture components that may be more likely to lead to cigarette ignition of the finished items, the program is not designed to predict the ignition performance of all UFAC furniture. CPSC staff testing found that some chairs that conformed to the UFAC program ignited from cigarettes, and some nonconforming chairs resisted ignition. The findings illustrated that cigarette-ignition resistance of upholstered furniture is more dependent on the fabrics and filling materials used, rather than on conformance with all aspects of the UFAC Program.[80]

Costs of mandating the requirements of the UFAC program should be minimal. Perhaps the major program element associated with costs is the requirement for a smolder-resistant barrier to be used under Class II fabrics when the seat cushion core is standard urethane foam. The primary barrier material for this purpose under the UFAC program is polyester fiberfill cushion wrap. Based on analysis of market data, fewer than 5 percent of upholstered furniture items are currently produced with Class II fabrics. The great majority of the seat cushions on these items already is made with polyester wraps, and, therefore, are conforming to the UFAC program. Incremental costs of using polyester wraps on all seat cushions covered with Class II fabrics could total less than $500,000.[81] Non-UFAC establishments surveyed in 1995 were found to be less likely than UFAC program participants to use heat-conducting welt cords in seat cushions. Welt cord that conforms to the UFAC program reportedly costs furniture manufacturers less than one cent more per yard, compared to comparable welt cord that does not conform to the UFAC program.[82] Incremental costs could be less than $.04 per seat cushion and $.07 or less per chair and $.15 or less per sofa, for items made with welt cord. Given what is believed to be the current high conformance rate, and the absence of welt cord in a substantial portion of upholstered furniture styles, incremental costs to substitute UFAC-compliant welt cord might total less than $200,000.[83] Other costs associated with changes in construction materials associated with the adoption of the UFAC program as a mandatory rule should be very minor. Incremental costs related to compliance enforcement should be low, since materials are already subject to verification testing to qualify as acceptable materials under the UFAC program and manufacturers already incur labeling costs under the UFAC program. However, it is possible that somewhat higher recordkeeping costs could be one of the major cost elements of mandating the UFAC program, given the minor costs related to materials. Total costs of compliance for adoption of the UFAC program as a mandatory standard could be under $5 million.

Benefits that would result from mandating compliance with the UFAC program would also be much smaller than estimated for other alternative performance standards discussed in this analysis. Most furniture covered with fabrics that would benefit most from a barrier of polyester fiberfill over urethane foam already are manufactured in that way. The cigarette-ignition resistance of nearly all upholstered items would not be significantly improved under this alternative. Although a minimal reduction in the

[79] Franklin, Robert. *Preliminary Environmental Assessment of a Draft Proposed Flammability Standard for Residential Upholstered Furniture.* November 2007.

[80] Charles Smith, Directorate for Economic Analysis, CPSC, and Linda Fansler, Directorate for Laboratory Sciences, *Cigarette Ignition Propensity of Upholstered Furniture,* November 1996.

[81] Based on the assumption that 5% of seat cushions with Class II fabrics (perhaps 150,000 cushions) would require polyester wraps.

[82] A representative of welt cord manufacturer, Petco-Sackner, reported during an October 17, 2007, telephone conversation with Charles Smith, Directorate for Economic Analysis, that UFAC welt cord is sold to furniture manufacturers for $32 per 1,000 yard reel, versus $25 per 1,000 yards for similar non-UFAC welt cord.

[83] If current UFAC conformance is about 90% and about 55% of units are made with welt cord (based on 1995 survey of manufacturers), average incremental welt cord costs of about $.11 per item would be applied to approximately 1.7 million units annually, with aggregate costs of about $185 million.

overall smoldering hazard (of less than 1%) could result in positive net benefits, the expected net benefits of adoption of the UFAC program as a mandatory standard would be minimal, and substantially below any other alternative performance standards discussed in this analysis.

d. A Mandatory Furniture Standard Based on the Revised Draft Provisions of California Technical Bulletin 117

In February 2002, California's Bureau of Home Furnishings published draft revisions to the state's Technical Bulletin (TB–117) that contains mandatory requirements for materials used in the manufacture of upholstered furniture sold in the state. Unlike the proposed standard, the revised California draft standard specifies open flame and smoldering ignition tests for filling materials (including urethane foam and loose filling materials). These filling materials requirements apply to all furniture items, including those covered in ignition resistant fabrics such as leather, wool and vinyl.

In addition, the revised draft TB–117 specifies a small open flame test for upholstery fabrics. The open flame test requires the 20 second application of a small open-flame to the crevice of a seat/back mock-up assembly of fabric over a standard flame-retardant polyurethane foam pad. The specimen fails if (1) weight loss exceeds 4 percent in the first 10 minutes, or (2) the specimen burns progressively before 10 minutes.

In the view of the Directorate for Engineering Sciences (ES), the open flame fabric test is less stringent than the open flame test for fabrics that was part of the CPSC staff's 2001 draft standard.[84] Nevertheless, ES believes that the great majority of fabrics currently used by the furniture industry would require modification in order to comply with the draft TB–117 test. This judgment is shared by the California Bureau of Home furnishings personnel, based on their testing experience.[85]

Based on testing by California's Bureau of Home Furnishings and the CPSC laboratory, it is reasonable to assume that the majority of cover materials are likely to fail the revised draft TB–117 open flame test, with the exception of ignition resistant cover materials (such as leather, wool, and vinyl-coated coverings) and some of the heavier-weight cellulosic fabrics. Consequently, for purposes of evaluating the costs and benefits of this alternative, we assume that two-thirds of the approximately 10 percent of cover materials that are severely ignition-prone cellulosic fabrics (which cover about 2 million units of furniture annually, or about 6% of all fabric coverings) would pass the draft TB–117 open flame fabric test. The remaining severely ignition-prone cellulosic fabrics (covering about 1 million furniture items) will be assumed to fail the test and therefore require FR treatment. An additional assumption is that all of the moderate- and lower-ignition prone cellulosics and thermoplastic cover materials (covering about 18 million furniture items annually, or about 60% of all furniture items produced) would fail the open flame fabric test and have to be treated. Thus, a total of about 19 million units of furniture would be covered in fabrics that would have to be treated in order to comply with the revised draft TB–117.

The primary costs of the revised draft TB–117 would be the costs of treating the filling materials (e.g., urethane foam and loose fill) and the cover fabrics that fail the open flame test. The per-unit costs of treating urethane foam and the loose fill could be similar to those estimated for the 2005 standard drafted by the CPSC staff. Consequently, the filling materials costs per item of furniture might amount to about $5.85 per unit. Since the TB–117 filling materials requirements would apply to all furniture items produced (including items using ignition resistant cover fabrics), the total filling materials costs would amount to about $178 million ($5.85 per unit × 30.5 million units). It is possible that additional costs would be required to treat fibrous filling materials under the revised draft TB–117, since the open flame test for that material could be more stringent than that drafted by the CPSC staff in 2005.

Based on the assumptions described above, approximately 19 million units of furniture would be covered in fabrics that fail the open flame fabric test and would therefore have to be treated. The estimated costs of FR treatments based on the 2001 CPSC staff draft open flame standard ranged from about $6.61 to $11.28 per average unit of furniture, with a midpoint of about $8.95 per item. If we assume that the incremental costs of FR-treated fabrics under TB–117 amount to about 75 to 100 percent of the costs estimated for the 2001 draft open flame standard, the midpoint of the resulting range of costs would be about $7.83 per item of furniture. Therefore, the aggregate costs of the FR treatment of fabrics might amount to about $151 million ($7.83 per item × 19.3 million items).

In summary, the costs of treating the filling materials and fabrics under TB–117 could amount to about $330 million annually or more ($178 million for filling materials and $151 million for fabrics). The associated compliance and distribution costs could bring the total up to about $370 million annually. This would be more than 6 times the estimated costs of the proposed standard, estimated to range from $34 million to $59 million.

The likely benefits that would result from adoption of the revised draft of TB–117 as a mandatory standard vary by cover material type. First consider the furniture covered by severely cigarette ignition-prone cellulosic fabrics (2.9 million units). Based on the assumptions described above, about 1 million of these furniture items will fail the open flame fabric test of the revised draft TB–117 and have to be treated. Since these furniture items will have fabric treatments as well as complying filling materials, it may be reasonable to assume that the benefits under the revised draft TB–117 would be comparable to those of the CPSC staff's 2005 draft standard (which would also have treated filling materials), about $118 per unit. Thus, the benefits from these items would amount to about $115 million ($118.05 per item × 978,300 items). Additionally, for the remaining 2.0 million units covered with severely cigarette ignition-prone fabrics that are not treated, the benefits would probably be no more than about half of the benefits associated with the treated units, or about $59 per unit. Thus, the benefits associated with these 2.0 million units with untreated fabrics might amount to about $115 million ($59.03 per unit × 1,956,600 units). Therefore, the total estimated benefits resulting from annual production of complying furniture upholstered with severely cigarette ignition-prone cellulosic fabrics would be about $231 million.

About 18.3 million units of furniture covered in moderately- and lower-ignition prone cellulosic fabrics and thermoplastic fabrics will also likely fail the open flame fabric test of the revised draft TB–117 and have to be treated. Under the staff's 2005 draft proposed standard, these furniture items would have treated filling materials, but not treated fabric coverings. For purposes of this analysis, we will assume that the benefits associated with the filling

[84] The 2001 CPSC draft standard required that there be no continuing combustion 15 minutes after a 20-second small flame application to a composite consisting of the fabric to be tested and non-FR urethane foam.

[85] Said Nurbakhsh, PhD, California Bureau of Home Furnishings, in a November 14, 2005, e-mail to Charles Smith, Directorate for Economic Analysis, CPSC.

materials tests of the revised draft TB–117 are similar to those of the CPSC staff's 2005 draft standard. Consequently, the estimated benefits associated with the revised draft TB–117 would be greater because the cover fabrics would also be treated. In other words, unlike the 2005 CPSC staff's draft standard, the benefits of treated filling materials would be augmented by the use of FR-treated fabrics under the revised draft TB–117. Since the estimated benefits for these furniture items under the staff's 2005 draft standard amount to about $251 million, the gross benefits associated with the revised draft TB–117 would be greater than $251 million. If we assume that the fabric treatments would reduce the remaining societal costs by about 50 percent, then the gross benefits for these 18.3 million units might amount to about $329 million ($251 million + 0.5 × ($408 million − $251 million)).[86]

Based on this analysis, the total benefits associated with the revised draft TB–117 might amount to about $560 million ($231 million from furniture covered with severely ignition prone fabrics and $329 million from furniture covered with other fabrics). These estimated benefits are greater than those associated with the proposed standard (estimated to range from $419 million to $424 million).

In summary, the estimated annual costs associated with the revised draft TB–117 may amount to about $370 million, and the estimated benefits may amount to about $560 million. Therefore, the estimated net benefits of this regulatory alternative are about $190 million. This compares to $365 million to $385 million in net benefits estimated to result from the proposed standard.

e. A Labeling Rule

A rule requiring hazard information to be presented on labels could be adopted by the Commission in addition to, or in lieu of, a standard. The costs of labeling would be just a few cents per item (based on reported labeling costs under the UFAC Voluntary Action Program and estimates provided by a label manufacturer). However, the impacts of such labeling on product safety are likely to be minimal. Labeling that warns of cigarette ignition hazards is unlikely to be effective, because labels are unlikely to be seen by consumers when the upholstered item is in use, and because there already is general public awareness of these hazards. Additionally, a warning label would not be likely to prevent fires started by children playing with lighters and matches, who are unlikely to read the statements provided.

f. Alternative Effective Date

Section 4 of the Flammable Fabrics Act states that standards or regulations shall become effective 12 months from the date of promulgation, unless the Commission finds that a different effective date is in the public interest. Because of the need for FR treatment of some fabrics used in the manufacture of furniture and the fact that furniture manufacturers carry stocks of fabrics, a longer period before the rule becomes effective, such as 18 months, could provide some firms additional time to use inventories of fabrics that would not pass the proposed standard's fabric test without FR treatment. However, given the small percentage of fabrics that will need to be treated (under 10%), it is unlikely that limiting the effective date to 12 months would substantially burden firms.

Additionally, several options might be available to furniture manufacturers that have fabric that does not comply with a regulatory alternative adopted by the CPSC as the effective date for the action approaches. They might send the remaining fabric yardage to contract finishers for backcoating with FR chemicals. They could use FR barrier materials beneath the untreated fabric, as allowed by that alternative method of compliance with the proposed standard. Also, they might sell the fabric to jobbers who would market it to furniture manufacturers that use FR barriers with untreated upholstery fabrics and for other end-uses that are not within the scope of the regulation. In view of the relatively small percentage of fabrics estimated to require FR treatments or other modifications, and other options available to furniture manufacturers, an effective date longer than 12 months from the date of promulgation might not be in the public interest.

g. Taking No Action

The Commission could determine that no rule is reasonably necessary to reduce the risk of fires associated with ignitions of upholstered furniture. Under this alternative, future societal losses would be determined by factors that affect the likelihood that ignition sources come in contact with upholstery and the ignition resistance of upholstery materials used by furniture manufacturers. For example, the apparently increasing use of ignition-resistant upholstery materials, such as leather, could reduce fires over time. Also, the state of California might adopt the draft revisions to its mandatory standard for upholstered furniture. Those revisions could result in reduced fire losses in that state, which accounts for perhaps 15 percent of the furniture market. Some furniture manufacturers might use materials that comply with some or all provisions of the California revised standard for all of their furniture production, which could reduce fire losses in other areas. Additionally, other political jurisdictions could impose requirements that would reduce future losses from furniture fires.

Factors other than furniture materials will also determine fire losses in the future. Some of these will tend to increase future losses (such as projected annual increases of about 1% in population and households) and others might decrease future losses (such as continued reductions in rates of smoking and alcohol consumption, increasing smoke alarm operability, information and education efforts, and installation of sprinkler systems in new construction).

Particularly noteworthy is the expected growth in the availability of cigarettes that reduce the probability of igniting upholstered furniture. Effective on June 28, 2004, the State of New York required all cigarettes sold in the state to self-extinguish if they are left unattended. Such cigarettes are expected to reduce greatly, but not eliminate, residential fires started by cigarettes. Similar legislation became effective in Vermont in 2006 and California, Oregon, and New Hampshire in 2007, and has been signed into law in 17 other states, with effective dates ranging from January 1, 2008, to January 1, 2010. Legislation has also been introduced in nine other states. By 2010, more than half of the U.S. population will be living in states with mandatory laws addressing the ignition propensity of cigarettes.[87] In addition to state actions, R.J. Reynolds Tobacco Company, the second-largest cigarette manufacturer with about one-third of the U.S. market, recently announced its intention to only market reduced ignition propensity cigarettes in the U.S. by the end of 2009.[88] This policy, combined with the increased imposition of state requirements, could spur other

[86] Based on estimates from tables 2, 4, and 6 in the November 2007 *Preliminary Regulatory Analysis.*

[87] Coalition for Fire-Safe Cigarettes, Legislative Updates. *http://www.firesafecigarettes.org* (referenced on September 19, 2007).

[88] Payne, Tommy J., Executive Vice President—Public Affairs, Reynolds American Inc., in a letter to James M. Shannon, National Fire Protection Association, October 25, 2007.

cigarette manufacturers to make similar business decisions.

If the Commission does not adopt a mandatory rule to address furniture flammability it is possible that a voluntary standard (perhaps through modifications to the existing UFAC Voluntary Action Program) could be developed based on the proposed standard, or based on other provisions, to address these hazards. However, no such voluntary standard currently exists. Moreover, the effort begun in 1996 through ASTM to establish a voluntary standard is currently inactive. Furthermore, comments submitted in response to the October 23, 2003, ANPR representing all segments of the affected industries supported mandatory federal regulation to address upholstered furniture flammability.

Thus, while furniture fires might decline with no CPSC action, there is no reason to believe that the decline would approach the proportion of fire losses that could be prevented with the proposed standard, or some of the other performance standard alternatives described in this analysis.

I. Initial Regulatory Flexibility Analysis

1. Introduction

The Regulatory Flexibility Act (''RFA'') requires that rules proposed by the Commission be reviewed for the potential economic impact on small entities, including small businesses. Section 603 of the RFA requires the Commission to prepare and make available for public comment an Initial Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. Accordingly, staff prepared an initial regulatory flexibility analysis for the proposed rule on upholstered furniture. A summary of the analysis follows.

2. Impact on Small Businesses and Other Small Entities

Summary of proposed requirements. The proposed standard will apply to finished or ready-to-assemble articles of upholstered furniture, as discussed earlier in this document. The proposed standard contains smoldering ignition performance requirements for cover fabrics, and smoldering and open flame performance requirements for interior fire barriers (if they are used as the method of compliance). Furniture items can comply by being made with upholstery cover materials that pass the cover material cigarette ignition test (designated as ''Type I upholstered furniture''). Alternatively, manufacturers may comply with the proposed standard by using a barrier material under the upholstery fabric that passes the standard's applicable barrier tests (''Type II upholstered furniture''). This option allows manufacturers to use non-complying upholstery fabrics.

In addition to flammability performance requirements, the proposed standard contains provisions relating to certification and recordkeeping, testing to support guaranties issued by material suppliers, and labeling of finished articles of upholstered furniture. These requirements are intended to help manufacturers, importers and suppliers ensure that their products comply, and to help the CPSC staff to enforce the performance standard.

The proposed standard provides that finished articles of upholstered furniture must carry a permanent label containing the manufacturer or importer name and location; month and year of manufacture; model identification; and type identification indicating the means of compliance (i.e., ''Type I'' or ''Type II''). This information must be separate from other label information. The label would help retailers and consumers identify products and materials, e.g., in the event of a recall or other corrective action.

In summary, all manufacturers and importers of upholstered furniture would be subject to the standard if it is adopted as a rule by the Commission. However, it is likely that the great majority of testing would be done by or for upholstery fabric suppliers. These results would then be used to support guaranties of compliance that will be provided to furniture manufacturers. Records would be prepared by those conducting tests (fabric and filling material manufacturer personnel or outside testing facilities); copies of reports and records would be maintained by upholstered furniture manufacturers and furniture importers. No special skills that are not already available to manufacturers and importers would be required to establish or verify compliance with the proposed rule.

Impact on small businesses. The proposed standard would apply to manufacturers and importers of upholstered furniture intended for sale to consumers. According to the Census Bureau's 2002 Economic Census, 1,686 U.S. companies (with 1,946 establishments) manufactured upholstered household furniture or dual-purpose sleep furniture as their primary product. Only 29 percent of upholstered furniture establishments (564 of 1,946) had 20 or more employees, and only 10 percent (200 establishments) had 100 or more. The U.S. Small Business Administration (SBA) considered a furniture manufacturing company to be ''small'' for purposes of qualification for small business loans if it has fewer than 500 employees (at all of its establishments). This definition encompassed more than 97 percent of firms in the industry in 2002.

The proposed standard will also affect manufacturers and finishers of upholstery fabrics and barrier materials used in the production of furniture. Although their products are not directly regulated by the draft proposed standard, it is expected that they will provide guaranties to furniture manufacturers regarding fabric ignition resistance. It is expected that about 10 percent of upholstery cover fabric yardage will require changes in production, such as the incorporation of flame retardant (FR) chemicals or changes in fibers, in order to pass the fabric test of the draft proposed standard. As noted above, non-complying fabrics could still be used with complying barrier materials. As with furniture manufacturers, the great majority of upholstery fabric manufacturers and fabric finishers are small businesses under SBA definitions.

The usual means of compliance with the proposed standard will be the use of fabrics that do not need FR treatments or barriers. More than 85 percent of all upholstered furniture items made under the proposed standard would be made with such materials. For these items, estimated average increased costs of the standard would be minor costs of a few cents per unit that are largely associated with compliance verification. For those units that comply as a result of FR treatment of fabrics or the use of barriers, estimated costs are higher, but are only estimated to involve less than 15 percent of total production. The increased resource costs associated with furniture using treated FR fabrics (i.e., the costs associated with materials, labor, and distribution) are expected to average about $9.95 per item of furniture; the increased costs associated with the use of barriers may amount to about $21 per unit.[89]

The cost impacts faced by firms using treated materials, including smaller manufacturers, would be proportionate to the yardage of treated upholstery fabrics or barrier materials used. Therefore, the costs of these methods of compliance are not expected to be borne disproportionately by smaller

[89] Cost estimates are weighted based on shipment data of larger items such as sofas and sofabeds (with higher costs) and smaller items such as chairs (with lower costs).

manufacturers of furniture. In addition, they should be able to pass at least some of these increased costs on to residential consumers. Small businesses that manufacture relatively inexpensive furniture that will require no fabric modifications should face only modest increases in expenses related to compliance verification, estimated to average $.11 per unit. For these reasons, it seems unlikely that the rule would have a significant impact on small furniture manufacturers.

Many of the fabrics currently used by small furniture manufacturers that would fail the fabric test of the proposed standard are likely to be relatively expensive decorative fabrics. The proposed standard's option of using FR barrier materials would be a likely means of compliance for furniture made with such fabrics, and this option was requested by the segment of the industry using the more expensive decorative fabrics when the CPSC staff was drafting an open flame standard in 2001. Other fabrics used by these small furniture manufacturers could be brought into compliance with FR treatments at lower per unit costs, if their aesthetic qualities would not be significantly degraded by the processes. These alternative means of compliance would allow decorative fabrics to remain available to the upholstered furniture industry and the consuming public. Since the prices of fabrics that would be treated or used with barriers, and the furniture made with them, are likely to be considerably higher than average, the relative increases in per unit costs would be moderated for the small furniture manufacturers that use them. Additionally, discussions with upholstered furniture manufacturers producing the more expensive furniture using decorative fabrics suggest that the barrier option will substantially address their concerns with likely adverse aesthetic effects of FR treatments for many of these fabrics.

The estimated per unit costs of the proposed standard discussed above include relatively modest costs for recordkeeping (included in the estimated average compliance verification costs of about $.11 per item of furniture). The proposed standard would require furniture manufacturers to maintain records for a period of three years after items are produced. The records will include identification and description of the furniture items and materials used in their manufacture, contact information for material suppliers, and results of relevant material tests. Smaller firms with limited product lines are expected to bear lower costs than larger firms with broad product lines. In summary, the recordkeeping requirements of the proposed rule would not likely place a substantial burden on small businesses.

The proposed standard was also designed to minimize testing costs that would be imposed on small furniture manufacturers. Since they may rely on guaranties provided by fabric and barrier material suppliers, the proposed rule does not require firms to test composites of their fabrics and the range of actual cushioning materials. Such testing would significantly increase costs of the proposed standard, and would likely disproportionately affect small manufacturers of upholstered furniture. Nor does the proposed standard include a requirement for a small open flame test of cover fabrics. An open flame test requirement similar to the 2001 CPSC staff draft furniture flammability standard would have added substantially to costs faced by small furniture manufacturers.

Many of the fabrics that would fail the fabric test of the proposed standard are likely to be more expensive decorative fabrics. Based on information provided by the Decorative Fabrics Association, its members are generally among the smaller establishments that will be affected by the proposed rule. Partially in response to comments received from this segment of the industry, the CPSC staff included the provision for use of acceptable barrier materials as an alternative means of compliance. This alternative was sought by the industry because of concerns that aesthetic qualities of many decorative fabrics would be adversely affected by FR treatments. This alternative allows all upholstery fabrics manufactured by small textile firms to be used under the proposed standard, and is expected to substantially mitigate the impact of the proposed standard on their businesses.

Under the proposed standard, manufacturers are required to conduct reasonable and representative tests to support initial guaranties of compliance for their materials. However, the costs associated with these requirements are expected to be minimal since many of these costs are now incurred for products marketed for use as complying with voluntary standards or mandatory standards enforced by California and other jurisdictions. Manufacturers of upholstery fabrics already classify their fabrics using the UFAC fabric classification test, which is similar to the fabric test of the proposed standard.

Thus, small manufacturers of fabrics should only face minor incremental costs for testing under the proposed standard, compared to current industry practices. Furthermore, small manufacturers should be able to pass at least some of the additional costs of testing to furniture producers and jobbers that purchase their products. This information suggests that the testing necessary to provide guaranties of compliance by small manufacturers of fabrics and filling materials will not result in a substantial impact on such firms.

3. Alternatives and Their Possible Effect on Small Businesses

Alternatives considered by the Commission are discussed in the Preliminary Regulatory Analysis section of this preamble, Section H. As discussed therein, four alternative standards were considered by the Commission: A standard based on requirements drafted by the CPSC staff in 2005 that includes smoldering and open flame ignition performance tests for filling materials, in addition to smoldering tests for cover fabrics and tests for barrier materials; the 2001 draft small open flame standard developed by the CPSC staff; a standard based on mandating the provisions of the UFAC voluntary program, and; a standard based on the 2002 revised draft California furniture regulation (TB–117). Other regulatory options were also evaluated that might lessen the potential burden on industry, including small firms. These regulatory alternatives include extending the effective date beyond 12 months after promulgation, and adoption of warning label requirements. Another alternative for consideration was the reliance on a voluntary standard or taking no action.

The CPSC staff's 2005 draft standard would require the use of cover fabrics that meet cigarette ignition performance tests, and the use of urethane foam and fibrous filling materials that meet both cigarette ignition and open flame ignition performance tests. Under this alternative, manufacturers would have the option of using fire blocking barriers which pass tests of smoldering and open flame ignition resistance instead of using complying fabrics and filling materials. Under the staff's 2005 draft standard, the cost impacts faced by firms using treated materials, including smaller manufacturers, would be proportionate to the amounts of treated cushioning materials used, and yardage of treated upholstery fabrics or barrier materials used. Therefore, the costs of these methods of compliance would not be expected to be borne disproportionately by smaller manufacturers of furniture. In addition, small manufacturers should be able to pass at least some of their increased costs on to residential consumers. For

these reasons, it is unlikely that this alternative would have a significant impact on these small furniture manufacturers.

Like the proposed standard, many of the fabrics used by small furniture manufacturers that would fail the fabric test of the staff's 2005 draft standard are likely to be relatively expensive decorative fabrics. Therefore, the statements made above regarding impacts of the proposed standard would also apply under this regulatory alternative. Also like the proposed standard, the Directorate for Economic Analysis does not believe that the recordkeeping requirements of the 2005 draft standard place a substantial burden on small businesses, and the 2005 draft was also designed to minimize testing costs that would be imposed on small furniture manufacturers.

Under the 2005 draft standard, processes and materials will be readily available to small businesses that manufacture cushioning materials for the furniture industry.[90] The Directorate for Economic Analysis believes that consequently, since at least some of the cost increases are likely to be passed on to the furniture manufacturers that purchase the materials, a rule based on the 2005 draft standard would probably not have a significant impact on a substantial number of small businesses that manufacture cushioning materials subject to the rule. Nevertheless, ignition performance requirements for filling materials were not included in the proposed standard, which results in somewhat lower costs of compliance compared to the 2005 draft alternative.

Another alternative considered by the Commission was the standard drafted by the CPSC staff in 2001 that focused on small open flame ignition of upholstered furniture. That draft standard was the subject of a staff briefing package submitted to the Commission in October 2001. Compliance with the small open flame standard would require the use of upholstery cover materials that do not sustain combustion (over standard urethane foam) following exposure to a small flame for 20 seconds, or, alternatively, the use of materials that would pass a barrier test.

Based on current market data, the 2001 draft small open flame standard probably would require FR treatments for about 70 percent of all upholstery cover materials, or the use of acceptable barrier materials, compared with less than 10 percent of cover materials requiring such modifications under the proposed standard. The estimated net benefits of the 2001 draft small open flame standard are substantial, and in the range of total net benefits estimated for the proposed standard. However, the estimated costs of the alternative small open flame standard are perhaps 5-to-8 times those estimated for the proposed standard. The higher estimated costs of compliance for the draft small open flame standard would place greater burdens on all manufacturers, including smaller firms.

Unlike the proposed standard, the small open flame draft standard would require substantial production testing, which could disproportionately affect small upholstered furniture manufacturers with smaller production runs. Additionally, since up to 70 percent of upholstery fabric yardage could require FR treatments under the draft small open flame standard, there would be greater competition for the available fabric backcoating capacity. Smaller furniture and fabric producers, with smaller lots of fabrics to be treated, reportedly would be faced with difficulties in competing with larger firms for timely access to fabric finishing services for necessary FR treatments.

As another alternative, the Commission could adopt the provisions of the UFAC Voluntary Action Program as a mandatory standard. The Upholstered Furniture Action Council, or UFAC, was formed by major furniture industry associations in 1974, and the UFAC Voluntary Action Program was developed in the late 1970's and amended in later years. The program requires classification of upholstery cover fabrics into either ''Class I'' or ''Class II,'' based on a cigarette ignition performance test. All conforming furniture must comply with specified construction criteria for welt cords, decking substrates, filling materials, and interior fabrics; and more cigarette ignition-prone Class II fabrics used with polyurethane foam seat cushions must have a barrier material between the fabric and foam that passes a barrier performance test. Conforming furniture is to be labeled with a UFAC tag. In 1996 the CPSC staff estimated that about 90 percent of upholstered furniture may have been produced in conformance with the UFAC program (including a majority of units produced by firms that did not participate in the UFAC program). Costs of mandating the requirements of the UFAC program should be minimal. Perhaps the major program element associated with costs is the requirement for a smolder-resistant barrier to be used under Class II fabrics when the seat cushion core is standard urethane foam. The primary barrier material for this purpose under the UFAC program is polyester fiberfill cushion wrap. Based on analysis of market data, fewer than 5 percent of upholstered furniture items are currently produced with Class II fabrics. The great majority of the seat cushions on these items already are made with polyester wraps, and, therefore, are conforming to the UFAC program. Total annual costs of compliance for adoption of the UFAC program as a mandatory standard could be under $5 million.

Benefits that would result from mandating compliance with the UFAC program would also be much smaller than estimated for the proposed standard and other alternative performance standards considered by the Commission. Most furniture covered with fabrics that would benefit most from a barrier of polyester fiberfill over urethane foam already are manufactured in that way. The cigarette-ignition resistance of nearly all upholstered items would not be significantly improved under this alternative. The expected net benefits of adoption of the UFAC program as a mandatory standard would be minimal, and substantially below any other alternative performance standards discussed in this analysis.

In summary, a mandatory standard based on the UFAC voluntary program would have a minimal impact on small businesses; much smaller than the proposed standard. However, this regulatory alternative would not be expected to lead to a significant reduction in smoldering or open flame ignition hazards of upholstered furniture.

Another alternative standard considered by the Commission was a revised draft standard for upholstered furniture published by California's Bureau of Home Furnishings in 2002. The draft would revise the state's Technical Bulletin (TB–117) which contains mandatory requirements for materials used in the manufacture of upholstered furniture sold in the state. Unlike the proposed standard, the revised California draft standard specifies open flame and smoldering ignition tests for filling materials (including urethane foam and loose filling materials). However, unlike the staff's 2005 draft (which did include such requirements), the filling materials requirements apply to all furniture items, including those covered in ignition-resistant fabrics such as leather, wool and vinyl.

In addition to tests for filling materials, the revised draft TB–117 specifies a small open flame test for upholstery fabrics. The great majority of

[90] Smith, *op. cit.*

fabrics currently used by the furniture industry probably would require modification in order to comply with the draft TB–117 test. For purposes of evaluating the costs and benefits of this alternative, the Directorate for Economic Analysis assumes that about 60 percent of all furniture items produced would be covered in fabrics that would have to be treated in order to pass the fabric test specified in the revised draft TB–117. The combined costs of treating the filling materials and fabrics under the revised draft TB–117 and the associated compliance and distribution costs could total more than six times the estimated costs of the proposed standard. The higher estimated costs of compliance of a standard based on the revised draft TB–117 regulation would place greater burdens on all manufacturers, including smaller firms.

Additionally, since about 60 percent of upholstery fabric yardage could require FR treatments in order to comply with the open flame fabric test of the revised draft TB–117, there would be greater competition for the available fabric backcoating capacity, which could cause smaller furniture and fabric producers, with smaller lots of fabrics to be treated, to be faced with difficulties in competing with larger firms for timely access to fabric finishing services for necessary FR treatments.

In summary, a standard based on the revised draft California furniture flammability regulation, TB–117, probably would have a more substantial and more disproportionate impact on small businesses than the proposed standard. The Directorate for Economic Analysis estimates that the greater burden would not result in higher benefits than the proposed standard, and estimated net benefits from one year's production of upholstered furniture under the regulatory alternative are close to $200 million lower than the net benefits estimated to result from the proposed standard.

Section 4 of the Flammable Fabrics Act states that standards or regulations shall become effective 12 months from the date of promulgation, unless the Commission finds that a different effective date is in the public interest. Because of the need for FR treatment of some fabrics used in the manufacture of furniture and the fact that furniture manufacturers carry stocks of fabrics, a longer period before the rule becomes effective, such as 18 months, could provide some firms (including smaller firms) additional time to use inventories of fabrics that would not pass the proposed standard's fabric test without FR treatment. However, given the small percentage of fabrics that will need to be treated, it seems unlikely that setting an effective date of 12 months from the date of promulgation will substantially burden firms.

The Commission could also require hazard information to be presented on labels in addition to, or in lieu of, a standard. The costs of labeling would be just a few cents per item (based on reported labeling costs under the UFAC Voluntary Action Program and estimates provided by a label manufacturer), and thus, should not present significant costs to small furniture manufacturers. However, the impacts of such labeling on product safety are likely to be minimal. Labeling that warns of cigarette ignition hazards probably would not be effective, because labels are unlikely to be seen by consumers when the upholstered item is in use, and because there already is public awareness of these hazards. Additionally, a warning label would not be likely to prevent fires started by children playing with lighters and matches, who are unlikely to read, or be affected by, the statements provided.

If the Commission does not adopt a mandatory rule to address furniture flammability it is possible that a voluntary standard (perhaps through modifications to the existing UFAC Voluntary Action Program) could be developed based on the proposed standard or based on other provisions, such as the industry recommendations, to address these hazards. However, no such voluntary effort is currently ongoing. Moreover, the effort begun in 1996 through ASTM to establish a voluntary open flame standard is currently inactive. Furthermore, comments submitted in response to the October 23, 2003, ANPR representing all segments of the affected industries supported mandatory federal regulation to address upholstered furniture flammability.

The Commission also could have chosen to take no action. In this situation, future societal losses would be determined by factors that affect the likelihood that ignition sources come in contact with upholstery and the ignition resistance of upholstery materials used by furniture manufacturers. For example, the apparently increasing use of ignition-resistant upholstery materials, such as leather, could reduce fires over time. Also, the state of California might adopt the draft revisions to its mandatory standard for upholstered furniture. Those revisions could result in reduced fire losses in that state, which accounts for perhaps 15 percent of the furniture market. Some furniture manufacturers might use materials that comply with some or all provisions of the California revised standard for all of their furniture production, which could reduce fire losses in other areas. Additionally, other political jurisdictions could impose requirements that would reduce future losses from furniture fires.

Factors other than furniture materials will also determine fire losses in the future. Some of these will tend to increase future losses (such as projected annual increases of about 1% in population and households) and others might decrease future losses (such as continued reductions in rates of smoking and alcohol consumption, increasing smoke alarm operability, information and education efforts, and installation of sprinkler systems in new construction).

Particularly noteworthy is the expected growth in the availability of cigarettes that reduce the probability of igniting upholstered furniture. Effective on June 28, 2004, the State of New York required all cigarettes sold in the state to self-extinguish if they are left unattended. Such cigarettes are expected to reduce greatly, but not eliminate, residential fires started by cigarettes. Similar legislation became effective in Vermont in 2006 and California, Oregon, and New Hampshire in 2007, and has been signed into law in 17 other states, with effective dates ranging from January 1, 2008, to January 1, 2010. Legislation has also been introduced in nine other states. By 2010, more than half of the U.S. population will be living in states with mandatory laws addressing the ignition propensity of cigarettes.[91] In addition to state actions, R.J. Reynolds Tobacco Company, the second-largest cigarette manufacturer with about one-third of the U.S. market, recently announced its intention to only market reduced ignition propensity cigarettes in the U.S. by the end of 2009.[92] This policy, combined with the increased imposition of state requirements, could spur other cigarette manufacturers to make similar business decisions.

While furniture fires might decline with no CPSC action, there is no reason to believe that the decline would approach the proportion of fire losses that could be prevented with the proposed standard, or some of the other performance standard alternatives described in this analysis.

[91] Coalition for Fire-Safe Cigarettes, Legislative Updates. *http://www.firesafecigarettes.org* (referenced on September 19, 2007).

[92] Payne, Tommy J., Executive Vice President—Public Affairs, Reynolds American Inc., in a letter to James M. Shannon, National Fire Protection Association, October 25, 2007.

J. Paperwork Reduction Act

The proposed standard will require manufacturers (including importers) of upholstered furniture to perform testing and maintain records of testing. For this reason, the proposed rule contains ''collection of information requirements,'' as that term is used in the Paperwork Reduction Act, 44 U.S.C. 3501–3520. Therefore, the proposed rule is being submitted to the Office of Management and Budget (''OMB'') in accordance with 44 U.S.C. 3507(d) and implementing regulations codified at 5 CFR 1320.11. The estimated costs of these requirements are discussed below.

1. Costs of Testing

The proposed standard specifies that initial samples of 10 test specimens for each tested upholstery fabric and barrier material (or 25 of 30 total specimens if failures are recorded among the first 10), must pass the applicable tests in order to qualify the materials for use in upholstered furniture. Manufacturers of fabrics and barrier materials are expected to either perform the tests in their own facilities or send materials to third party testing facilities in order to support guaranties of compliance to furniture manufacturers. Some manufacturers of decorative fabrics that could not pass the proposed cover fabric test without FR treatments may choose to forego the costs of testing and market their products with the understanding that they would be used with complying barrier materials.

As noted above, approximately 100 to 200 domestic manufacturers derive a significant share of their revenues from fabric they produce or import for residential upholstered furniture. An average of about 50 samples per firm could support guaranties for fabrics sold to upholstered furniture manufacturers. A substantial majority of fabrics that would be subjected to tests would likely be qualified by passing results on the initial sample of 10 specimens. If the average cost per test were $50, the cost of testing a single fabric would amount to about $500, and the average testing costs per firm would be about $25,000. Aggregate fabric testing costs for the 100 to 200 domestic manufacturers would be $2.5 million to $5 million.

Guaranties for barrier materials would be supported by passing results on the proposed barrier tests for (1) open flame ignition resistance and (2) smoldering ignition resistance. Average costs to conduct each of these tests could be approximately $125 per test. Assuming barrier materials are qualified by the testing results for the initial samples of 20 specimens (10 for the open flame ignition resistance test and 10 for the smoldering ignition resistance test), total testing costs per barrier material marketed for use under the standard would be about $2,500. If barrier material manufacturers market an average of four guarantied products for use as barriers, total testing costs per firm would be about $10,000. If 15 firms issue guaranties for complying barriers, total costs related to barrier testing would be about $150,000. Thus, total testing costs for upholstery fabric and barrier materials could amount to about $2.65 million to $5.15 million.

Since firms could continue to market qualified fabrics and barriers without the need for additional testing, testing costs per firm could be lower in subsequent years under the standard.

2. Cost of Information Collection and Recordkeeping

In addition to upholstery fabric and barrier material testing, the proposed standard will require manufacturers to maintain detailed documentation of the test results and details of each test performed by or for that manufacturer. Records are required to be in English and kept at a location in the United States for a period of at least three years after production of the article of upholstered furniture certified by the test results ceases.

Costs of detailed testing documentation are included in the estimated costs of testing. Maintaining the testing documentation by manufacturers of fabrics and barrier materials could require an additional two hours of labor for each material that is certified or guarantied. As discussed above, maintaining records for perhaps 5,000 to 10,000 guarantied upholstery fabrics and 60 barrier materials could be required under the proposed standard. Perhaps two hours of labor could be required at a cost of about $26 per hour to maintain these records for each guarantied material. Therefore, total recordkeeping costs incurred by upholstery fabric and barrier material manufacturers could range from about $263,000 to $523,000 ($52 times 5,060 to 10,060 guaranties). Recordkeeping costs could average $2,600 for each upholstery fabric manufacturer and $208 for each barrier material manufacturer.

Upholstered furniture manufacturers would also maintain records of testing results for fabrics and barrier materials used in their production. Incremental costs related to recordkeeping would depend, in part, on the extent to which firms currently maintain records identifying upholstery fabrics and filling materials with finished items. Perhaps an average of about 40 hours per firm would be required to maintain records under the proposed standard. According to the 2002 Economic Census, 1,686 firms manufactured upholstered furniture as their primary product. At approximately $26 per hour, these firms would incur average costs of about $1,000 per firm to maintain records, and aggregate annual costs may be about $1.75 million. Thus, the total costs of information collection and recordkeeping could amount to about $2.0 million to $2.3 million.

K. Environmental Considerations

Usually, CPSC rules establishing performance requirements are considered to ''have little or no potential for affecting the human environment,'' and environmental assessments are not usually prepared for these rules (see 16 CFR 1021.5(c)(1)). However, because some alternatives to the proposed rule could result in more materials incorporating flame retardant (FR) chemicals, the Commission determined that a more thorough consideration of the potential for environmental impacts was warranted. The staff prepared a memorandum ''Environmental Assessment of Regulatory Alternatives for Addressing Upholstered Furniture Flammability'' (available on the Commission's Web site) which discusses the potential environmental effects of several regulatory alternatives for addressing the flammability of upholstered furniture. The staff's analysis concludes that, although available scientific data are lacking on some FR chemicals, there appears to be a number of promising methods that manufacturers could use to meet an upholstered furniture flammability standard without posing an unacceptable health risk to consumers or significantly affecting the environment. The staff's analysis was initiated when the primary regulatory alternative being considered was the staff's 2005 draft standard which would likely have caused manufacturers to use FR chemicals to meet certain provisions of that draft standard. As noted previously, the standard that the Commission is proposing was developed, in part, to minimize the need for manufacturers to use FR chemicals to comply with the standard. Only about 14 percent of the cover fabrics would require some modification to pass the proposed standard. The staff anticipates that most manufacturers will likely rely primarily on modifying cover fabrics (without using FR chemicals) or on barriers to meet the proposed performance requirements.

In accordance with the National Environmental Policy Act (''NEPA''), the Executive Director of CPSC has issued a Finding of No Significant Impact (''FONSI'') for the proposed upholstered furniture flammability standard. The FONSI is based on the staff's Environmental Assessment and concludes that there will be no significant impacts on the quality of the human environment as a result of the proposed upholstered furniture flammability standard. The Commission requests comments on both the Environmental Assessment and the FONSI.[93]

L. Executive Order 12988

According to Executive Order 12988 (February 5, 1996), agencies must state the preemptive effect, if any, of new regulations. The preemptive effect of this proposed regulation is as stated in section 16 of the FFA. 15 U.S.C. 1203(a).

M. Effective Date

The Commission proposes that the rule would become effective one year from publication of a final rule in the **Federal Register** and would apply to upholstered furniture manufactured on or after that date. The Commission believes that a one-year effective date should allow sufficient time for manufacturers to develop products for nationwide markets that will meet the proposed requirements. The Commission requests comments, especially from small businesses, on the proposed effective date and the impact it would have.

N. Proposed Findings

1. *General*. In order to issue a flammability standard under the FFA, the Commission must make certain findings and include these in the regulation, 15 U.S.C. 1193(j)(2). These findings are discussed in this section.

2. *Voluntary standards*. In the 1970s the Upholstered Furniture Action Council (UFAC) developed a voluntary industry program to assess the cigarette ignition propensity of upholstered furniture. The substance of the UFAC tests was then adopted in the ASTM E–1353 test method. CPSC staff estimates that approximately 90% of furniture production conforms to the UFAC voluntary program/ASTM E–1353 standards. However, while fire losses from cigarette-ignited upholstered furniture fires have been declining, a large number of deaths (260 annually) and injuries (320 annually) over the period 2002–2004 that could be addressed by the proposed rule remain. Moreover, CPSC laboratory testing has found that UFAC-conforming furniture can nevertheless ignite and burn when exposed to smoldering cigarettes. The Commission is unaware of any other adopted and implemented voluntary standards that address the risk of fire from upholstered furniture ignitions. Accordingly, the Commission finds that compliance with any adopted and implemented voluntary upholstered furniture flammability standard is not likely to result in the elimination or adequate reduction of the risk of injury from such fires.

3. *Relationship of benefits to costs*. The Commission estimates the potential discounted benefits of a year's production of upholstered furniture complying with the standard to range from about $419 million to $424 million (based on a 3 percent discount rate). Compliance costs range from an estimated $34 million to $59 million annually. Thus, projected net benefits of the proposed standard range from $363 million to $385 million. On this basis, the Commission finds that the expected benefits from the regulation bear a reasonable relationship to its costs.

4. *Least burdensome requirement*. The Commission considered proposing the following alternatives: the staff's 2005 draft standard, the staff's 2001 draft small open flame standard, revised requirements drafted by California, a rule based on the industry's voluntary program, and a ''no action'' alternative under which the status quo would continue to prevail. Although the staff's 2005 draft standard could result in substantial net benefits, it would impose significantly higher costs and would necessitate the increased use of FR chemicals. While the staff's 2001 draft small open flame standard would likely be more effective in reducing small open flame fire losses, it would also impose greater costs and necessitate an increase in FR chemicals (nearly 66 percent of upholstery covers would likely need to receive FR treatments to pass). A proposal based on California's TB 117 requirements, which contains provisions for both fabrics and filling materials, would likely have substantial annual costs (about $370 million) and would result in significantly lower net benefits (about $190 million) than the proposed standard. The fact that significant levels of annual deaths and injuries remain despite the existence of the voluntary standard and a high level of compliance with it demonstrate that both the alternatives of a rule based on the voluntary standard and the no action alternative are unlikely to result in adequate reduction or elimination of the risk. Therefore, the Commission finds that the proposed upholstered furniture flammability standard is the least burdensome requirement that would prevent or adequately reduce the risk of injury for which the regulation is being promulgated.

O. Conclusion

For the reasons stated in this preamble, the Commission preliminarily finds that a flammability standard for upholstered furniture is needed to adequately protect the public against the unreasonable risk of the occurrence of fire leading to death, injury, and significant property damage. The Commission also preliminarily finds that the standard is reasonable, technologically practicable, and appropriate. The Commission further finds that the standard is limited to the fabrics, related materials and products which present such unreasonable risks.

List of Subjects in 16 CFR Part 1634

Consumer protection, Flammable materials, Labeling, Upholstered furniture, Upholstered furniture materials, Records, Textiles, Warranties.

For the reasons stated in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations by adding part 1634 to read as follows:

PART 1634—STANDARD FOR THE FLAMMABILITY OF UPHOLSTERED FURNITURE AND UPHOLSTERED FURNITURE MATERIALS

Subpart A—General, Definitions, Performance Requirements

Sec.

Subpart B—Requirements Applicable to Manufacturers, Labeling, Guaranties

[93] Both of these documents are available from the Commission's Office of the Secretary (see **ADDRESSES** section above) or from the Commission's Web site at: *http://www.cpsc.gov/library/foia/foia08/brief/briefing.html.*

Authority: 15 U.S.C. 1193.

Subpart A—General, Definitions, Performance Requirements

§ 1634.1 Purpose, scope, and effective date.

(a) *Purpose.* This part 1634 establishes flammability limits that all upholstered furniture subject to this part must meet before sale or introduction into commerce. The purpose of these requirements is to reduce deaths and injuries associated with upholstered furniture fires.

(b) *Scope.* All upholstered furniture as defined in § 1634.2(a) manufactured or reupholstered on or after the effective date of this standard is subject to the requirements of this part.

(c) *Effective date.* The standard shall become effective on [the effective date of this standard] and shall apply to all upholstered furniture, as defined in 1643.2(a), manufactured or reupholstered on or after that date.

§ 1634.2 Definitions.

In addition to the definitions given in section 2 of the Flammable Fabrics Act as amended (15 U.S.C. 1191), the following definitions apply for purposes of this part 1634.

(a) *Upholstered furniture* means, for purposes of this part 1634, an article of seating furnishing intended for indoor use in a home or other residential occupancy that: consists in whole or in part of resilient cushioning materials (such as foam, batting, or related materials) enclosed within a covering consisting of fabric or related materials, such as leather; and is constructed with contiguous upholstered seat and back or arms(s).

(1) Items included in the scope of paragraph (a) of this section include, but are not limited to, products that are intended or promoted for indoor residential use for sitting or reclining upon, such as: chairs, sofas, motion furniture, sleep sofas, home office furniture customarily offered for sale through retailers or otherwise available for residential use, and upholstered furniture intended for use in dormitories or other residential occupancies. This includes the unattached cushions or pillows on such items if they are sold with the item of upholstered furniture.

(2) Items excluded from the scope of paragraph (a) of this section consist of: furniture, such as patio chairs, intended solely for outdoor use; furniture without contiguous upholstered seating and backs and/or arm surfaces, such as ottomans; pillows or pads that are not sold with an article of furniture; commercial or industrial furniture not offered for sale through retailers or not otherwise available for residential use; furniture intended or sold solely for use in hotels and other short-term lodging and hospitality establishments; futons, flip chairs, the mattress portions of sleep sofas; and infant or juvenile products such as walkers, strollers, high chairs, or pillows.

(b) *Type I* upholstered furniture means upholstered furniture that is constructed with an upholstery cover fabric or other material that covers the seating area and is certified to meet the performance requirements of § 1634.4.

(c) *Type II* upholstered furniture means upholstered furniture that is constructed with an interior fire barrier material that:

(1) Is located directly beneath the external covering material;

(2) Completely encases the filling material used in the seating area of the item of upholstered furniture; and

(3) Is certified to meet the performance requirements of §§ 1634.5 and 1634.6.

(d) *Manufacturer* means any entity that produces or reupholsters upholstered furniture or manufactures upholstered furniture materials subject to this part 1634. For purposes of this part, an importer of upholstered furniture is also a manufacturer. See subpart F of this part for additional information on reupholstering.

(e) *Produced* means, for the purposes of this part 1634, manufactured or imported.

(f) *Upholstery cover fabric* means the outermost layer of attached fabric or other material, such as leather, used to cover the seating area of the upholstered furniture item.

(g) *Crevice* means the location in the mockup formed by the intersection of the vertical and horizontal surfaces of the test mockup.

(h) *Interior fire barrier* means a fire-resistant material which is interposed between the upholstery cover fabric and any interior filling material.

(i) *Fire-resistant material* means a material capable of reducing the likelihood of ignition or delaying fire growth.

(j) *Flame retardant* means having a chemical coating or treatment added that imparts greater fire resistance.

(k) *Ignition* (for open flame testing) means continuous, self-sustaining combustion, characterized by the presence of any visible flaming, glowing, or smoldering, after removal of the ignition source.

(l) *Metal test frame* means the apparatus consisting of two rectangular metal frames used for assembly of seating area mockups in open flame ignition resistance tests. See subpart E of this part.

(m) *Mockup assembly* means the seating area mockup consisting of the component material to be evaluated and all required standard test materials, fully assembled in the appropriate specimen holder or metal test frame.

(n) *Sample* means a material to be tested for use in upholstered furniture subject to this part.

(o) *Seating area* means those portions of an item of upholstered furniture which a person may sit upon, or rest against while sitting, including the seat

and the inside of the back and arms of the item. The seating area includes such surfaces of any loose pillows or cushions that are not attached to the item of upholstered furniture but are sold with it.

(p) *Self-extinguishment* means the unassisted termination of any visible combustion within a defined time period after ignition source removal and before the specimen is completely consumed.

(q) *Sheeting material* means cotton sheeting fabric used to cover the cigarette ignition source in smoldering ignition resistance tests. See subpart C of this part.

(r) *Smolder* means combustion characterized by smoke production, without visible flame or glowing.

(s) *Specimen* means an individual piece of upholstery fabric or barrier material, as defined in paragraph (n) of this section, used in a mockup assembly for smoldering or open flame ignition testing.

(t) *Specimen holder* means the two wooden panels used for assembly of seating area mockups in smoldering ignition resistance tests. See subpart C of this part.

(u) *Standard polyurethane foam (SPUF) substrate* means the standard substrate used for the assembly of seating area mockups to evaluate materials used in upholstered furniture construction. See subparts C and E of this part.

(v) *Substrate* means the innermost material of the tested seating area mockup, representing the filling material used in upholstered furniture.

(w) *Warp or machine direction of the fabric* means the direction of yarns that run lengthwise, i.e., parallel to selvage, in woven fabrics.

§ 1634.3 General requirements.

(a) *Upholstered furniture.* Each item of upholstered furniture subject to this part shall comply with the performance requirements of this part applicable to the upholstered furniture materials required for that ''Type'' of upholstered furniture and all other applicable requirements of this part.

(b) *Guaranties.* Each guaranty issued under this part shall be in accordance with the applicable requirements of § 1634.9.

(c) *Summary of § 1634.4 through § 1634.6 tests.* The test methods set forth in §§ 1634.4 through 1634.6 measure the flammability performance (resistance to smoldering or small open flame ignition) of cover fabrics and fire barrier materials through a series of tests using small scale mockups representative of the typical construction of upholstered furniture.

(d) *Standard cover fabric cutting*—(1) *Smoldering test.* The vertical panel pieces shall be cut with the long dimension being in the warp direction and the top edge is defined such that the pile lays smooth when brushed from top to bottom. The horizontal panel pieces shall be cut with the long dimension being in the warp direction and the top edge is defined such that the pile lays smooth when brushed from top to bottom.

(2) *Open flame test.* The open flame test specimens shall be cut with the long dimension being in the warp direction (if applicable).

§ 1634.4 Upholstery cover fabric smoldering ignition resistance test.

(a) *Scope.* This test method is intended to measure the cigarette ignition resistance of upholstery cover fabrics used in upholstered furniture. This test applies to all upholstery cover fabrics to be used in Type I upholstered furniture.

(b) *Summary of test method.* Ten initial test specimens are required for the upholstery cover fabrics sample. Vertical and horizontal panels of a standard foam substrate are covered, using the upholstery cover fabric to be tested. These panels are placed in the specimen holders, and a lighted cigarette is placed in the crevice formed by the intersection of vertical and horizontal panels of each test assembly. Each cigarette is covered with a piece of sheeting fabric. The cigarettes are allowed to burn their entire length. Test measurements and observations are recorded during and after the 45-minute test duration. The mockup must not continue to smolder at the end of the test or transition to flaming at any time during the test, and the substrate must not exceed the mass loss limit. If the 10 initial specimens meet the performance criteria in paragraph (m) of this section, the cover fabric sample passes. If a failure is recorded in any of the 10 initial specimens, the test shall be repeated on an additional 20 specimens. At least 25 of the 30 specimens tested must meet the performance criteria of paragraph (m) of this section.

(c) *Significance and use.* This test method is designed to measure the resistance of an upholstery cover fabric to a smoldering ignition source when the fabric is placed over a standard polyurethane foam substrate.

(d) *Test apparatus and materials.* The test apparatus and materials used in this test are detailed in subpart C of this part.

(e) *Ignition source.* The ignition source is the standard cigarette specified in subpart C of this part.

(f) *Sheeting material.* Sheeting material shall be used to cover the standard test cigarettes. For testing, the fabric shall be cut into squares 127 × 127 mm (5.0 × 5.0 in). Use the sheeting material specified in subpart C of this part.

(g) *Standard polyurethane foam substrate.* Upholstery cover materials shall be tested in a specimen holder using standard polyurethane foam (SPUF) substrate. Use the SPUF substrate specified in subpart C of this Part.

(1) The SPUF substrate shall be cut into 203 × 203 × 76 mm (8.0 × 8.0 × 3.0 in) pieces for vertical panels and 127 × 203 × 76 mm (5.0 × 8.0 × 3.0 in) pieces for horizontal panels.

(2) Each SPUF substrate piece shall be hand crushed before use by wadding or balling up one time in the fist.

(3) On the data sheet, record the initial mass of each horizontal and vertical SPUF substrate piece to the nearest 0.1 grams.

(h) *Specimen holder.* The specimen holder shall consist of two wooden panels, each a nominal 203 × 203 mm (8.0 × 8.0 in) and nominal 19 mm (0.75 in) thickness, joined together at one edge. A moveable horizontal panel support shall be positioned on a centrally located guide. See subpart C and Figures 1 and 2.

(i) *Test facility and cautions.* The test facility, exhaust system, and cautions are detailed in subpart D of this part.

(j) *Conditioning.* All test specimens and standard test materials (including SPUF substrates, cigarettes, and sheeting material) shall be conditioned in accordance with subpart C of this part.

(k) *Test specimens*—(1) *Specimen requirements.* (i) From the upholstery cover fabric sample to be tested, initially 10 specimens shall be cut, comprised of vertical panels, each 203 × 432 mm (8.0 × 17.0 in), and horizontal panels, each 203 × 280 mm (8.0 × 11.0 in).

(ii) The vertical and horizontal panel cover fabric pieces shall be cut with the long dimension in the warp direction and such that the major areas of fabric variation will lie in the crevice of the mockup assembly.

(iii) The horizontal panel cover fabric pieces shall be mounted warp to warp with the vertical panel pieces such that the major areas of fabric variation will lie in the crevice of the mockup assembly.

(2) *Specimen mounting.* (i) For vertical panels, place the cover fabric on the 203 × 203 × 76 mm (8.0 × 8.0 × 3.0

in) SPUF substrate pieces, taking care that any areas of fabric variation mentioned in paragraph (k)(1) of this section are positioned such that they will form the crevice of the assembled mockup. The warp or machine direction of the fabric should run front to back on the mockup assembly. Attach the cover fabric to the SPUF substrate pieces with straight pins and pull the cover fabric smooth so that no air gaps exist between the fabric and SPUF substrate. Attach the cotton sheeting material to the vertical panels with straight pins so that the sheeting material will cover the cigarette when placed in the crevice, approximately 50 mm (2 in) from the top of the 203 mm (8.0 in) dimension.

(ii) For horizontal panels, place the cover fabric on the 127 x 203 x 76 mm (5.0 x 8.0 x 3.0 in) SPUF substrate pieces, taking care that any areas of fabric variation mentioned in paragraph (k)(1) of this section are on the edge which will form the crevice of the assembled mockup. The warp direction of the cover fabric shall run front to back on the mockup assembly. Attach the cover fabric to the SPUF substrate pieces with straight pins and pull the fabric smooth so that no air gaps exist between the fabric and foam substrate.

(iii) Place the assembled vertical and horizontal panels in the specimen holder. Press the horizontal panel against the vertical panel to create a straight-line crevice at the intersection. See Figure 3.

(l) *Test procedure.* (1) Place the assembled mockups a sufficient distance apart from each other to avoid heat transfer between samples.

(2) Light cigarettes so that no more than 4 mm (0.16 inch) is burned away and place one cigarette on each mockup crevice created by the intersection of the vertical and horizontal panels, such that the cigarette contacts both surfaces and is equidistant from the side edges of the test panels.

(3) Immediately after placement in the crevice of each mockup, cover cigarettes with cotton sheeting and run one finger over the sheet along the length of the covered cigarette to ensure good cover sheeting-to-cigarette contact and begin timer. If a test is inadvertently interrupted or a cigarette self-extinguishes on lighting, it shall be repeated from the beginning with a new cigarette.

(4) Continue testing for 45 minutes.

(5) At 45 minutes, if the mockup assembly is smoldering, record a failure for the mockup and extinguish with appropriate means and proceed to paragraph (m) of this section. See Subparts C and D of this part.

(6) Remove cotton sheeting fabric and remains of upholstery fabric from the substrate pieces.

(7) Carefully remove the SPUF substrate pieces, clean all carbonaceous char from panels with a brush.

(8) If the application of an extinguishing agent was not necessary or a gaseous extinguishing agent (e.g., carbon dioxide or nitrogen) was applied to the SPUF substrate, record the mass of the un-charred portions of the SPUF substrate pieces to the nearest 0.1 grams within 15 minutes and proceed to paragraph (m) of this section.

(m) *Pass/fail criteria.* (1) The sample passes the requirements of this test procedure if the following criteria are met:

(i) No mockup continues to smolder after the 45 minute test duration;

(ii) No mockup transitions to open flaming; and

(iii) No SPUF substrate (i.e., sum of both horizontal and vertical pieces) of any mockup assembly has more than 10% mass loss.

(2) If the 10 initial specimens meet the performance criteria of this paragraph (m), the cover fabric sample passes. If a failure is recorded in any of the 10 initial specimens, the test shall be repeated on an additional 20 specimens. At least 25 of the 30 specimens tested must meet the criteria of this paragraph.

(n) *Test report.* The test report shall include, at a minimum, the following information:

(1) Name and address of test laboratory;

(2) Date of the test(s);

(3) Name of the operator conducting the test;

(4) Complete description of the test specimens;

(5) Applicable smoldering and mass and data for each SPUF substrate piece from each mockup including:

(i) Mockup smoldering at 45 minutes (Yes/No);

(ii) Pre-test mass;

(iii) Post-test mass; and

(iv) The percent mass loss of the SPUF substrate of each mockup assembly.

(6) Statement of overall pass/fail results.

§ 1634.5 Interior fire barrier material smoldering ignition resistance test.

(a) *Scope.* This test method is intended to measure the cigarette ignition resistance of interior fire barrier materials used in upholstered furniture to be used in Type II upholstered furniture. This test method applies to fire-resistant materials including, but not limited to, all interior fabrics or high loft battings to be qualified as fire barriers.

(b) *Summary of test method.* Ten initial test specimens are required for the interior fire barrier sample. Vertical and horizontal panels of the interior fire barrier material to be tested are placed between a standard foam substrate and a standard cover fabric. The panels are placed in the specimen holders and a lighted cigarette is placed in the crevice formed by the intersection of the vertical and horizontal panels in each test assembly. Each cigarette is covered with a piece of sheeting fabric. The cigarettes are allowed to burn their full length. Test measurements and observations are recorded during and after the 45-minute test duration. The substrate must not exceed the mass loss limit at the end of the test and the mockup assembly must not transition to open flaming at anytime during the test. If the initial 10 specimens meet the performance criteria in paragraph (n) of this section, the interior fire barrier sample passes. If a failure is recorded in any of the 10 initial specimens, the test shall be repeated on an additional 20 specimens. The performance criteria of paragraph (n) of this section must be met on at least 25 of the 30 specimens tested.

(c) *Significance and use.* This test method is designed to measure the resistance of an interior fire barrier material to a smoldering ignition source when the barrier is placed between a standard cover fabric and a standard foam substrate.

(d) *Test apparatus and materials.* The test apparatus and materials are detailed in subpart C of this part.

(e) *Ignition source.* The ignition source is the standard cigarette specified in subpart C of this part.

(f) *Sheeting material.* Sheeting material shall be used to cover the standard test cigarettes. For testing, the fabric shall be cut into squares 127 x 127 mm (5.0 x 5.0 in). Use the sheeting material specified in subpart C of this part.

(g) *Standard cover fabric.* (1) The standard cover fabric represents a smolder-prone fabric. Use the standard cover fabric specified in subpart C of this part.

(2) From the standard cover fabric, initially 10 pieces shall be cut for vertical panels each 203 x 432 mm (8.0 x 17.0 in) and initially 10 pieces for horizontal panels each 203 x 280 mm (8.0 x 11.0 in).

(h) *Standard polyurethane foam substrate.* (1) Fire barrier materials shall be tested in a specimen holder using standard polyurethane foam (SPUF) substrate. Use the SPUF substrate specified in subpart C of this part.

(2) The SPUF substrate shall be cut into pieces 203 x 203 x 76 mm (8.0 x 8.0 x 3.0 in) for vertical panels and 127 x 203 x 76 mm (5.0 x 8.0 x 3.0 in) for horizontal panels.

(3) Each SPUF substrate piece shall be hand crushed before use by wadding or balling up one time in the fist.

(4) Record the initial mass to the nearest 0.1 grams of each horizontal and vertical SPUF substrate piece in the data sheet.

(i) *Specimen holder.* The specimen holder shall consist of two wooden panels, each a nominal 203 x 203 mm (8.0 x 8.0 in) and nominal 19 mm (0.75 in) thickness, joined together at one edge. A moveable horizontal panel support is positioned on a centrally located guide. See subpart C and Figures 1 and 2.

(j) *Test facility and cautions.* The test facility, exhaust system, and cautions are detailed in subpart D of this part.

(k) *Conditioning.* All test specimens and standard test materials (including SPUF substrates, cigarettes, and sheeting material) shall be conditioned in accordance with subpart C of this part.

(l) *Test specimens*–(1) *Test specimen requirements.* From the interior fire-barrier material sample to be tested, initially 10 specimens shall be cut, comprised of vertical panels each 203 x 356 mm (8.0 x 14.0 in) and horizontal panels each 203 x 229 mm (8.0 x 9.0 in). If the interior fire-barrier material is directional, the vertical panel pieces shall be cut with the long dimension being in the warp direction. The horizontal panel specimens shall be cut such that the short dimension is in the warp direction.

(2) *Specimen mounting.* (i) For vertical panels, place the 203 x 432 mm (8.0 x 17.0 in) standard cover fabric over the fire-barrier material on a 203 x 203 x 76 mm (8.0 x 8.0 x 3.0 in) SPUF substrate piece. The standard cover fabric and interior fire-barrier shall be oriented such that the top edges of these materials run from top to bottom. Attach with straight pins and pull smooth so that no air gaps exist. Attach the cotton sheeting material to the vertical panels with straight pins so that the sheeting material will cover the cigarette when placed in the crevice, approximately 50 mm (2.0 in) from the top of the panel.

(ii) For horizontal panels, place the 203 x 280 mm (8.0 x 11.0 in) standard cover fabric over the interior fire-barrier on the 127 x 203 x 76 mm (5.0 x 8.0 x 3.0 in) SPUF substrate pieces. The standard cover fabric and interior fire-barrier shall be oriented such that the top edges of these materials run from the crevice to the front. Attach with straight pins and pull smooth so that no air gaps exist.

(iii) Place the assembled vertical and horizontal panels in the specimen holders. Press the horizontal panel against the vertical panel to create a straight-line crevice at the intersection. See Figure 4.

(m) *Test procedure.* (1) Place the assembled mockups a sufficient distance apart from each other to avoid heat transfer between samples.

(2) Light cigarettes so that no more than 4 mm (0.16 inch) is burned away and place one cigarette on each mockup crevice created by the intersection of the vertical and horizontal panels, such that the cigarette contacts both surfaces and is equidistant from the side edges of the test panels.

(3) Immediately after placement in the crevice of each mockup, cover cigarettes with cotton sheeting and run one finger over the sheet along the length of the covered cigarette to ensure good cover sheeting-to-cigarette contact and begin timer. If a test is inadvertently interrupted or cigarette self extinguishes on lighting, it shall be repeated from the beginning with a new cigarette.

(4) Continue testing for 45 minutes.

(5) At 45 minutes, if the mockup assembly is smoldering, extinguish with appropriate means. See subparts C and D of this part.

(6) Remove cotton sheeting fabric, remains of standard cover fabric, and interior fire-barrier material from the substrate panels.

(7) Carefully remove the SPUF substrate test panels and clean all carbonaceous char from panels with a brush.

(8) If the mockup has self-extinguished by the end of the 45 minute test, or if a gaseous extinguishing agent (e.g. carbon dioxide or nitrogen) was applied to the mockup, record the mass of the un-charred portions of the SPUF substrate pieces to the nearest 0.1 grams within 15 minutes and proceed to § 1634.5(n).

(9) If a mass-adding extinguishing agent (e.g., water-based agent) was applied to the substrate, re-condition the SPUF substrate pieces as follows.

(i) Place the SPUF substrate pieces in the active flow of a laboratory air hood to dry for at least 24 hours.

(ii) Measure and record the mass of the SPUF substrate pieces to the nearest 0.1 gram.

(iii) Place the SPUF substrate pieces in the active flow of the laboratory air hood to dry for at least three additional hours.

(iv) Measure and record the mass of the SPUF substrate pieces to the nearest 0.1 gram and compare the measurement with the previous one.

(v) Repeat this procedure every three hours until the mass of the substrate pieces remains within a tolerance of 0.5% from the previous reading.

(vi) Re-condition the SPUF pieces according to paragraph (k) of this section.

(vii) Record the mass of the un-charred portions of the SPUF substrate pieces to the nearest 0.1 grams.

(n) *Pass/fail criteria.* (1) The sample passes the requirements of this test procedure if the following criteria are met:

(i) No SPUF substrate (i.e., sum of both horizontal and vertical pieces) of any specimen from a mockup assembly has more than 1% mass loss; and

(ii) No mockup assembly transitions to open flaming.

(2) If the 10 initial specimens meet the performance criteria of this paragraph (n), the interior fire-barrier sample passes. If a failure is recorded in any of the 10 initial specimens, the test shall be repeated on an additional 20 specimens. At least 25 of the 30 specimens tested must meet the performance criteria of this paragraph (n).

(o) *Test report.* The test report shall include, at a minimum, the following information:

(1) Name and address of test laboratory;

(2) Date of the test(s);

(3) Name of the operator conducting the test;

(4) Complete description of the test specimens;

(5) Mass data for each SPUF substrate piece from each mockup including:

(i) Pre-test mass;

(ii) Post-test mass; and

(iii) The percent mass loss of the SPUF substrate of each mockup assembly.

(6) Statement of overall pass/fail results.

§ 1634.6 Interior fire barrier material open flame ignition resistance test.

(a) *Scope.* This test procedure is intended to measure the open flame ignition resistance of interior fire-barrier materials to be used in Type II upholstered furniture. This test applies to materials including, but not limited to, interior fabrics or high loft battings to qualify them as fire-barriers.

(b) *Summary of test method.* Ten initial test specimens are required for the interior fire-barrier sample. The interior fire-barrier material to be tested is placed between a standard cover fabric and standard foam substrate and assembled on a metal test frame. An

open flame ignition source is applied to the crevice formed by the intersection of the seat/back surfaces of the mockup. Test measurements and observations are recorded during the 45-minute test duration. The mockup assembly must not exceed the mass loss limit. If the 10 initial specimens meet the performance criteria of paragraph (n) of this section, the interior fire-barrier sample passes. If a failure is recorded in any of the 10 initial specimens, the test shall be repeated on an additional 20 specimens. At least 25 of the 30 specimens tested must meet the performance criteria of paragraph (n) of this section.

(c) *Significance and use.* This test method is designed to measure the resistance of an interior fire-barrier material to an open flame ignition source when the barrier is placed between a standard cover fabric and a standard foam substrate.

(d) *Test apparatus and materials.* The test apparatus and materials are detailed in subpart E of this part.

(e) *Ignition source.* The ignition source is the nominal 240 mm butane gas flame described in subpart E of this part.

(f) *Standard cover fabric.* (1) The standard cover fabric represents a moderately flammable upholstery cover fabric. Use the standard cover fabric specified in subpart E of this part.

(2) The standard cover fabric size needed for each test is 1020 x 700 ± 10 mm (40 x 27.5 ± 0.4 in). From the standard cover fabric, cut triangular cut-outs centered 575 mm (22.5 in) from the top edge on both sides. The size of these cut-outs shall be approximately 55 x 135 ± 5 mm (2.1 x 5.25 ± 0.2 in) high. See subpart E of this part and Figure 5.

(g) *Standard polyurethane foam substrate.* (1) Interior fire-barrier materials shall be tested with a standard polyurethane foam (SPUF) substrate. Use the SPUF substrate specified in subpart E of this part.

(2) Two panels of the SPUF substrate shall be used. The vertical (back) block shall be 457 x 305 ± 5 mm (18.0 x 12.0 ± 0.2 in) x 76 ± 2 mm (3.0 ± 0.08 in) thick. The horizontal (seat) block shall be 457 x 83 ± 5 mm (18.0 x 3.25 ± 0.2 in) x 76 ± 2 mm (3.0 ± 0.08 in) thick.

(h) *Metal test frame.* The metal test frame shall consist of two rectangular metal frames locked at right angles to each other. A rod shall be continuous across the back of the metal test frame. See subpart E of this part and Figure 6.

(i) *Test facility and cautions.* The test facility, exhaust system and cautions are detailed in subpart D of this part.

(j) *Conditioning.* All test specimens and standard test materials shall be conditioned in accordance with subpart E of this part.

(k) *Test specimens.* (1) The interior fire-barrier specimen needed for each test is 1020 x 700 ± 10 mm (40 x 27.5 ± 0.4 in). From the interior fire-barrier specimen, cut triangular cut-outs centered 575 mm (22.5 in) from the top edge on both sides. The size of these cut-outs shall be approximately 55 x 135 ± 5 mm (2.1 x 5.25 ± 0.2 in) high. See subpart E of this part and Figure 5.

(2) If the interior fire-barrier material is directional, the specimen shall be cut with the long dimension (1020 mm, 40 in) being in the warp direction and the top edge is defined as appropriate.

(l) *Mockup assembly.* (1) Position the seat frame in the upright position. Adjust the horizontal and vertical (seat and back) panels by loosening the screws holding the two panels in place. Pull the horizontal panel forward and the vertical panel upwards creating a larger gap between the two panels at the crevice. Temporarily secure the two panels in place (expanded position).

(2) Lay the interior fire-barrier specimen flat and face up on the table. Lay the standard cover fabric on top, face up.

(3) Fold the two sides of the top (larger) section of fabric and fire-barrier specimen (from the cutout upwards) over the face of the standard cover fabric.

(4) Thread the folded standard cover fabric and fire-barrier specimen under the horizontal rod and pull them out from the back of the metal test frame until the cutouts are lined up with the horizontal rod.

(5) Thread the folded standard cover fabric and fire-barrier specimen back over the rod and pull them out from the front of the frame.

(6) Line up and pull both the top and bottom sections of the standard cover fabric and fire-barrier specimen so that the cutouts are lined up with the metal rod on both sides and the standard cover fabric and fire-barrier specimen are laying flat and free of folds and wrinkles.

(7) Place the larger SPUF block flush against the back metal frame and resting on the fire-barrier specimen. Loosen the screws holding the vertical (back) panel and lower the panel until the top of the panel is flush with the top of the larger SPUF foam block. Tighten the screws so that the vertical panel is secure.

(8) Lift the larger portion of both the fire-barrier specimen and standard cover fabric over the SPUF back block and secure them to the top of the back section of the metal frame using metal clips.

(9) Starting at the lowest part of the vertical section on one side, clip both the fire-barrier specimen and standard cover fabric to the frame. At the top corner, make a diagonal fold of the fire-barrier specimen separate from the standard cover fabric. Make a similar fold with the standard cover fabric and secure all the folded layers (both fire-barrier and standard cover fabric) to the frame with metal clips to the side of the test frame. Repeat for the other side.

(10) When the back section is completed, place the frame down so that the back of the frame is on the table.

(11) Lift up the smaller portion of the standard cover fabric and fire-barrier specimen and lay them flat on the back panel.

(12) Place the smaller SPUF block with the 83 mm (3.25 in) side flush against the seat section of the metal frame and press against the back panel. Loosen the screw holding the horizontal panel and move the panel until the panel is flush with the smaller SPUF foam block. Tighten the screws so that the horizontal panel is secure.

(13) Pull the smaller section of the fire-barrier specimen and standard cover fabric over the SPUF seat block and secure them to bottom front edge of the metal frame using metal clips.

(14) Re-position the assembly in the upright position.

(15) On one side, fold the unsecured front edge of the fire-barrier specimen back against the SPUF block. Then, make a diagonal fold with the unsecured top edge of fire-barrier specimen down on top of it. Repeat with the unsecured edges of standard cover fabric and clip to the bottom of the metal test frame. Repeat on the other side.

(16) Ensure that the standard cover fabric and fire-barrier specimens are smooth and under uniform tension at all locations to eliminate air gaps between the standard cover fabric, fire-barrier specimen, and the SPUF blocks. Do not allow a gap exceeding 3 mm (0.125 inch) along the seat/back crevice. See Figure 7.

(m) *Test procedure.* Have a means for extinguishing the specimen close at hand. A hand-held carbon dioxide extinguisher is adequate for most specimens; however, a water spray system should be available as a back-up, in case the carbon dioxide fails to completely extinguish the fire.

(1) *Pretest.* (i) Tare the scale with the empty metal test frame and clips or, if the scale does not have tare capability, record the mass of metal test frame and clips.

(ii) Assemble the mockup as described in paragraph (l) of this section.

(iii) Record the initial mass of the fabric/specimen/substrate assembly directly (if tared) or by subtraction (if not tared).

(iv) Calculate and record the mass corresponding to 20% mass loss of initial mass of the mockup assembly.

(2) *Lighting the igniter flame.* (i) Open the butane tank slowly and light the end of the burner tube. Adjust the gas flow to the appropriate rate to achieve a 240 mm flame. See subpart E of this part.

(ii) Allow the flame to stabilize for at least 2 minutes.

(3) *Starting and performing the test.* (i) Place the lit burner tube in the crevice of the mockup so that the end of the igniter is at the center of the mockup equidistant from either edge.

(ii) Apply the flame for 70 ± 1 seconds, then immediately remove ignition source from the mockup. Observe the mockup combustion behavior for 45 minutes.

(iii) Terminate a test run if any of the following conditions occurs:

(A) The mockup self-extinguishes;

(B) The 45 minute test duration has elapsed; or

(C) The mass of the mockup reaches more than 20% mass loss of the initial mass before 45 minutes have elapsed.

(n) *Pass/fail criterion.* (1) The sample passes if no mockup assembly has more than 20% mass loss at the end of the 45-minute test.

(2) If the 10 initial specimens meet the performance criterion, the interior fire-barrier sample passes. If a failure is recorded in any of the 10 initial specimens, the test shall be repeated on an additional 20 specimens. At least 25 of the 30 specimens tested must meet the performance criterion of this paragraph.

(o) *Test report.* The test report shall include, at a minimum, the following information:

(1) Name and address of the test laboratory;

(2) Date of the test(s);

(3) Name of operator conducting the test;

(4) Complete description of the test specimens;

(5) Mass data for the mockup including:

(i) Initial mass;

(ii) Mass corresponding to 20% mass loss of initial mass;

(iii) Time to reach the mass equal to 20% mass loss of the initial mass;

(iv) The percent mass loss of the mockup at 45 minutes.

(6) Statement of overall pass/fail results.

Subpart B—Requirements Applicable to Manufacturers, Labeling, Guaranties

§ 1634.7 Requirements applicable to upholstered furniture manufacturers.

(a) *General.* Each manufacturer (including importers) of upholstered furniture subject to this part shall ensure that each article of upholstered furniture it manufactures or imports for introduction into commerce complies with all applicable requirements of this part.

(b) *Label.* Each article of upholstered furniture subject to this part shall bear a label conforming to the requirements of § 1634.8.

(c) *Certification.* The certification statement specified on the label required by paragraph (b) of this section constitutes the manufacturer's certification that the article of upholstered furniture to which it is affixed complies with all applicable requirements of this part.

(d) *Basis for certification.* The manufacturer shall have an objectively reasonable basis for the certification required by paragraph (c) of this section. Examples of an objectively reasonable basis for certification are:

(1) Records of reasonable and representative tests demonstrating compliance with all applicable requirements of this part for each cover or barrier material required for the Type of furniture specified on the label required by § 1634.8; or

(2) Possession of guaranties meeting the requirements of § 1634.9 for each cover or barrier material required for the Type of furniture specified on the label required by § 1634.8 and maintaining that the manufacturer has not, by further processing, negatively affected the fire performance of any such cover or barrier material.

(e) *Records.* (1) Every upholstered furniture manufacturer (including importers) subject to this part shall maintain records of the test results and details of each test performed by or for that manufacturer (including failures) intended to support certification in accordance with paragraph (c) of this section. Details shall include all the information required in the Test Report in accordance with §§ 1634.4(n), 1634.5(o) and 1634.6(o).

(2) Records required by this paragraph (e) shall be in English and kept at a location in the United States.

(3) Records required by this paragraph (e) shall be maintained by the manufacturer during production of the upholstered furniture and for a period of at least three (3) years after production of the article of upholstered furniture ceases. These records shall be made available to Commission staff upon request.

(f) *Cessation of production.* If the manufacturer becomes aware of any information that indicates that any article of upholstered furniture manufactured by that manufacturer fails to comply with this part, the manufacturer shall cease production and distribution of such upholstered furniture until corrective action has been taken to ensure that further production will conform to all applicable requirements of this part.

(g) *Notification to upholstered furniture material suppliers.* An upholstered furniture manufacturer who becomes aware of information indicating that any cover or barrier material used, or intended to be used, in upholstered furniture produced by it fails to meet any applicable requirement of this part shall promptly inform the supplier of that material of the deficiency. (Upholstered furniture manufacturers are also reminded of the reporting requirements of § 15 of the Consumer Product Safety Act, 15 U.S.C. 2064, and implementing regulations at 16 CFR part 1115.)

§ 1634.8 Labeling.

(a) Each article of upholstered furniture subject to this part shall bear a permanent, conspicuous, and legible label containing:

(1) Name of the manufacturer (and importer, if any);

(2) Location of the manufacturer (and importer, if any), including street address, city and state;

(3) Month and year of manufacture;

(4) Model identification;

(5) Type identification (i.e., ''Type I'' or ''Type II''); and

(6) The statement ''The manufacturer hereby certifies that this article of upholstered furniture complies with all applicable requirements of 16 CFR part 1634''.

(b) The information required by paragraph (a) of this section shall be set forth separately from any other information appearing on the label. Other information, representations, or disclosures, appearing on labels required by this section or elsewhere on the item, shall not interfere with, minimize, detract from, or conflict with, the required information.

(c) No person shall remove or mutilate, or cause or participate in the removal or mutilation of, any label required by this section to be affixed to any article of upholstered furniture.

§ 1634.9 Requirements applicable to guaranties under section 8 of the FFA, 15 U.S.C. 1197.

(a) *General.* Either the manufacturer of a finished article of upholstered furniture subject to this part or the manufacturer of any cover or barrier material subject to this part may issue a guaranty in accordance with this section. The guaranty shall specify the classification(s) (Type I or II) of upholstered furniture for which the guaranty is intended to be valid.

(b) *Tests to support guaranties.* Section 8 of the Flammable Fabrics Act, 15 U.S.C. 1197, requires that a guaranty thereunder ultimately be supported by reasonable and representative tests. Reasonable and representative tests for purposes of this part shall be tests performed sufficiently to demonstrate that the tested item conforms with each applicable requirement of this part.

Subpart C—Apparatus and Materials for Smoldering Ignition Resistance Tests

§ 1634.10 Test room.

(a) The test room shall have an appropriate fire protection suppression system. A suitable extinguishment system such as a water bottle fitted with a spray nozzle shall be provided to extinguish any ignited portions of the mockup assembly. Dry chemical extinguishing agents shall not be used to extinguish or suppress smoldering combustion since the chemicals add mass therefore increasing the post-test mass of the mockup remains. In addition, straight pins, staples, a razor, knife or scissors, a scale, and a brush and/or tongs may be needed to perform the tests.

(b) If conditions in the test room do not meet the conditioning specifications, then testing must be initiated within 10 minutes after the specimens are removed from the conditioning room.

§ 1634.11 Specimen holder.

The specimen holder shall consist of two wooden panels, each nominal 203 x 203 mm (8.0 x 8.0 in) and nominal 19 mm (0.75 in) thickness, joined together at one edge. A moveable horizontal panel support is positioned on a centrally located guide. See Figures 1 and 2.

§ 1634.12 Ignition source.

The ignition source for all smoldering tests shall be cigarettes without filter tips made from natural tobacco, 85 ± 2 mm (3.3 ± 0.1 in) long and with a packing density of 0.27 ± 0.02 g/cm^3 (0.16 ± 0.01 oz/in^3) and a total weight of 1.1 ± 0.1 g (0.039 ± 0.004 oz).

§ 1634.13 Sheeting material.

(a) The specifications of the sheeting material are as follows:

(1) Fiber content: 100% cotton

(2) Color: White

(3) Construction: Plain weave, 19–33 threads per square centimeter (120–210 threads per square inch)

(4) Weight/square yard: 125 ± 28 g/m^2 (3.7 ± 0.8 oz/yd^2).

(b) The sheeting shall be refurbished once before use with the following laundering procedure. The sheeting material shall be washed and dried one time in accordance with sections 8.2.2 and 8.2.3 of American Association of Textile Chemists and Colorists (AATCC) Test Method 124–2001 ''Appearance of Fabrics after Repeated Home Laundering.'' Washing shall be performed in accordance with sections 8.2.2 and 8.2.3 of AATCC Test Method 124–2001 using wash temperature (V) 60 ± 3 °C (140 ± 5 °F) specified in Table II of that method, and the water level, agitator speed, washing time, spin speed and final spin cycle specified in ''Normal/Cotton Sturdy'' in Table III of the method. A maximum wash load shall be 8 pounds. Drying shall be performed in accordance with section 8.3.1(A) of that test method, Tumble Dry, using the exhaust temperature (66° ± 5 °C; 150° ± 10 °F) and cool down time of 10 minutes specified in the ''Durable Press'' conditions of Table IV of the method.

§ 1634.14 Standard polyurethane foam substrate.

(a) The SPUF substrate is used for assembly of the mockups for evaluation of upholstery cover fabric and interior fire barriers and to qualify standard cover fabrics.

(b) *Flammability performance.* (1) Open flame performance. The SPUF shall be tested in accordance with the test procedures specified in § 1634.6, but without the use of the standard cover fabric and using a 5-second impingement of the 35 mm butane flame specified in § 1634.20(d). In three consecutive trials, using SPUF from the production lot to be qualified, the SPUF substrate shall have a mass loss that is greater than 20 percent in less than 120 seconds after removal of the ignition source.

(2) *Smoldering performance.* The SPUF shall be tested in accordance with the test procedures specified in § 1634.4, but without the use of a cover fabric. In three consecutive trials, using SPUF from the production lot to be qualified the SPUF substrate shall have a mass loss less than 1%.

(c) The SPUF substrate shall have the following specifications:

(1) Density: 1.8 lb/ft^3

(2) Indentation Load Deflection (ILD): 25 to 30

(3) Air permeability: Greater than 4.0 ft^3/min

(4) No flame-retardant chemical treatment as determined by post-production chemical analysis.

§ 1634.15 Standard cover fabric (cotton velvet) smoldering qualification for barrier test.

(a) *Flammability properties.* The standard cover fabric used in smoldering tests for interior fire barriers in accordance with § 1634.5, shall meet the following requirements: when tested directly over a qualified SPUF foam substrate following the procedure in § 1634.4, the substrate mass loss average of 10 test results shall be 50 ± 5%.

(b) The standard cover fabric shall also have weight/square yard: 10 oz/yd^2.

(c) A 100% cotton, velvet pile fabric of beige color, with no backcoating and treated with certain finishing chemicals involving a resin catalyst that contains small amounts of melamine, generally demonstrates the desired flammability performance characteristics specified.

§ 1634.16 Conditioning.

(a) All test specimens and standard test materials (including SPUF substrates, cigarettes, and sheeting material) shall be conditioned at a temperature of 21° ± 3 °C (70° ± 5 °F) and between 50% and 66% relative humidity for at least 24 hours prior to testing.

(b) If conditions in the test room do not meet these specifications, then testing must be initiated within 10 minutes after the specimens are removed from the conditioning room.

Subpart D—Test facility, exhaust system, and hazards

§ 1634.17 Test facility and exhaust system.

The room in which tests under this part are conducted shall have a volume greater than 20 m^3 in order to contain sufficient oxygen for testing, or if smaller, the room shall have a ventilation system permitting the necessary flow of air. During the pretest and testing period, airflow rates shall be maintained below 0.1 m/s, measured in the locality of the mockup assembly to provide adequate air movement without disturbing the burning behavior. Room ventilation rates before and during tests shall be maintained at about 200 ft^3/min. Airflow rates in this range have been shown to provide adequate oxygen without physically disturbing the burning behavior of the ignition source or the mockup assembly. In addition, the ventilation system of the test facility

shall be capable of extracting smoke and toxic combustion products generated during testing for health and safety reasons.

§ 1634.18 Hazards.

(a) Health and safety risks associated with conducting the required testing in accordance with this part 1634 exist. It is essential that suitable precautions be taken, which include the use of breathing apparatus and protective clothing. Products of combustion can be irritating and dangerous to test personnel. Test personnel should avoid exposure to smoke and gases produced during testing.

(b) A suitable means of fire extinguishment shall be at hand. When the termination point of the test has been reached and the fire is extinguished, the presence of a back-up fire extinguisher is recommended. It is often difficult to determine when combustion in a mockup assembly has ceased, even after an extinguishment action is taken, due to burning deep inside the specimens. Care should be taken that specimens are disposed of only when completely inert.

Subpart E—Test Facility and Materials for Open Flame Ignition Resistance Tests

§ 1634.19 Test room.

The test room shall be draft protected and equipped with a suitable ventilation system for exhausting smoke and any toxic gases generated during testing.

§ 1634.20 Butane gas flame ignition source.

(a) The butane gas flame ignition source shall be in accordance with the following specifications or equivalent:

(1) The burner tube shall consist of a stainless steel tube, 8.0 ± 0.1 mm (5/16 ± 0.004 inch) outside diameter, 6.5 ± 0.1 mm (0.256 ± 0.004 inch) internal diameter.

(2) The butane shall be ''C.P. Grade'' (chemically pure) butane, 99.0% purity.

(b) There shall be a means to control the flow rate of butane.

(c) In the open flame test of section 1634.6 a nominal 240 mm flame butane is required. The nominal 240 mm butane flame is obtained by establishing a flow rate of butane gas that is 350 ± 10 ml/min at 25 °C (77 °F) and 101.3 kPa (14.7 psi).

(d) In standard material qualification tests for SPUF and Rayon, a nominal 35 mm butane is required. The nominal 35 mm butane flame is obtained by establishing a flow rate of butane gas that is 45 ± 2 ml/min at 25 °C (77 °F) and 101.3 kPa (14.7 psi).

(e) Flame height is measured from the center end of the burner tube when held horizontally and the flame is allowed to burn freely in air.

§ 1634.21 Metal test frame.

(a) The metal test frame shall consist of two rectangular steel frames locked at right angles to each other (See Figure 6).

(b) The frames shall be made of nominal 25 mm x 25 mm (1 x 1 inch) steel angle 3 mm (0.125 inch) thick, and shall securely hold platforms of steel mesh set 6 ± 1 mm (0.25 ± 0.05 inch) below the front face of each test frame.

(c) An optional standard edging section around the steel mesh will provide protection and greater rigidity. The rod shall be continuous across the back of the apparatus.

§ 1634.22 Standard cover fabric (rayon) open flame qualification for barrier test.

(a) The standard cover fabric used in open flame tests for interior fire barriers shall be tested in accordance with the test procedures specified in § 1634.6 using a 20 second application of the 35 mm butane gas flame specified in § 1634.20. In five consecutive trials, the assembly mass loss must be greater than 40% at 5 minutes when tested with a qualified SPUF.

(b) The standard rayon cover fabric shall also:

(1) Be 100% bright regular rayon, scoured, 20/2 ring spun basket weave construction; and

(2) Have weight/square yard: 8.0 ± 0.5 oz/yd^2.

§ 1634.23 Open flame tests fabric cut-out dimensions.

The fabric cut-out dimensions needed for installing in the mockup assembly to conduct open flame tests are shown in Figure 5.

§ 1634.24 Standard polyurethane foam substrate.

(a) The SPUF substrate used for assembly of mockups shall meet the following flammability performance requirements.

(1) The SPUF shall be tested in accordance with the open flame test procedures specified in § 1634.6, but without the use of the standard cover fabric and using a 5-second impingement of the 35 mm butane flame specified in § 1634.20(d). In three consecutive trials, using SPUF from the production lot to be qualified, the SPUF substrate shall have a mass loss that is greater than 20 percent in less than 120 seconds after removal of the ignition source.

(2) The SPUF shall be tested in accordance with the smoldering test procedures specified in § 1634.4, but without the use of a cover fabric. In three consecutive trials, using SPUF from the production lot to be qualified the SPUF substrate shall have a mass loss less than 1%.

(b) The SPUF substrate shall have the following specifications:

(1) Density: 1.8 lb/ft^3

(2) Indentation Load Deflection (ILD): 25 to 30

(3) Air permeability: Greater than 4.0 ft^3/min

(4) No flame-retardant chemical treatment as determined by post production chemical analysis.

§ 1634.25 Conditioning.

(a) All test specimens and standard test materials shall be conditioned at a temperature of 21° ± 3 °C (70° ± 5 °F) and between 50% and 66% relative humidity for at least 24 hours prior to testing.

(b) If conditions in the test room do not meet the conditioning specifications, then testing must be initiated within 10 minutes after the specimens are removed from the conditioning room.

Subpart F—Reupholstering

§ 1634.26 Requirements applicable to reupholstering.

(a) Section 3 of the Flammable Fabrics Act (15 U.S.C. 1192) prohibits, among other things, the ''manufacture for sale'' of any product which fails to conform to an applicable standard issued under the FFA.

(b) Reupholstering upholstered furniture for sale is manufacturing upholstered furniture for sale and, therefore, is subject to the FFA and all applicable requirements of this part.

(c) Reupholstering is any replacing of upholstered furniture material that is subject to any applicable performance requirements of §§ 1634.4 through 1634.6.

(d) If the person who reupholsters the upholstered furniture intends to retain the reupholstered furniture for his or her own use, or if a customer hires the services of the reupholsterer and intends to take back the reupholstered furniture for his or her own use, ''manufacture for sale'' has not occurred and such an article of reupholstered furniture is not subject to this part.

(e) If an article of reupholstered furniture is sold or intended for sale, either by the reupholsterer or the owner of the upholstered furniture who hires the services of the reupholsterer, such a transaction is considered to be ''manufacture for sale'' and the article of upholstered furniture is subject to all applicable requirements of this part.

Dated: February 14, 2008.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

List of Relevant Documents

1. Briefing memorandum from Dale R. Ray, Project Manager, Directorate for Economic Analysis, to the Commission, ''Regulatory Alternatives for Upholstered Furniture Flammability,'' November 20, 2007.

2. Memorandum from Rohit Khanna & S. Mehta, Directorate for Engineering Sciences, to Dale R. Ray, Project Manager, Directorate for Economic Analysis, ''Technical Rationale Report for the Draft Standard for the Flammability of Upholstered Furniture,'' November 2007.

3. Memorandum from D. Miller, Directorate for Epidemiology, to Dale R. Ray, Project Manager, Directorate for Economic Analysis, ''Analysis of Laboratory Data for Upholstered Furniture,'' November 16, 2007.

4. Memorandum from Robert Franklin, EC, to Dale R. Ray, Project Manager, Directorate for Economic Analysis, Environmental Assessment of a Draft Proposed Flammability Standard for Residential Upholstered Furniture,'' November 2007.

5. Memorandum from Charles L. Smith, Directorate for Economic Analysis, to Dale R. Ray, Project Manager, ''Preliminary Regulatory Analysis of a Draft Proposed Flammability Rule to Address Ignitions of Upholstered Furniture,'' December 2007.

6. Memorandum from Charles L. Smith, Directorate for Economic Analysis, to Dale R. Ray, Project Manager, Directorate for Economic Analysis, ''Proposed Rulemaking on Upholstered Furniture Flammability, Initial Regulatory Flexibility Analysis,'' December 2007.

7. Memorandum from Martha A. Kosh, Office of the Secretary, to Directorate for Economic Analysis, ''Ignition of Upholstered Furniture by Small Open Flames and/or Smoldering Cigarettes,'' List of Comments on CF 04–2, December 29, 2003, revised October 19, 2004.

8. Memorandum from A. Bernatz, L. Fansler & L. Scott, to Dale R. Ray, Project Manager, Directorate for Economic Analysis, ''Test Program for Upholstery Fabrics and Fire Barriers,'' November 8, 2007.

9. Memorandum from P. Semple, Executive Director, to the Commission, ''Finding of No Significant Impact from Implementation of the Proposed Flammability Standard for Residential Upholstered Furniture,'' November 19, 2007.

10. Memorandum from W. Zamula, Directorate for Economic Analysis, to Dale R. Ray, Project Manager, Directorate for Economic Analysis, ''Costs for Non-Fatal, Addressable Residential Civilian Injuries Associated with Upholstered Furniture Fires,'' September 6, 2007.

BILLING CODE 6355–01–P

Figure 1 - Cigarette Ignition Specimen Holder - Base

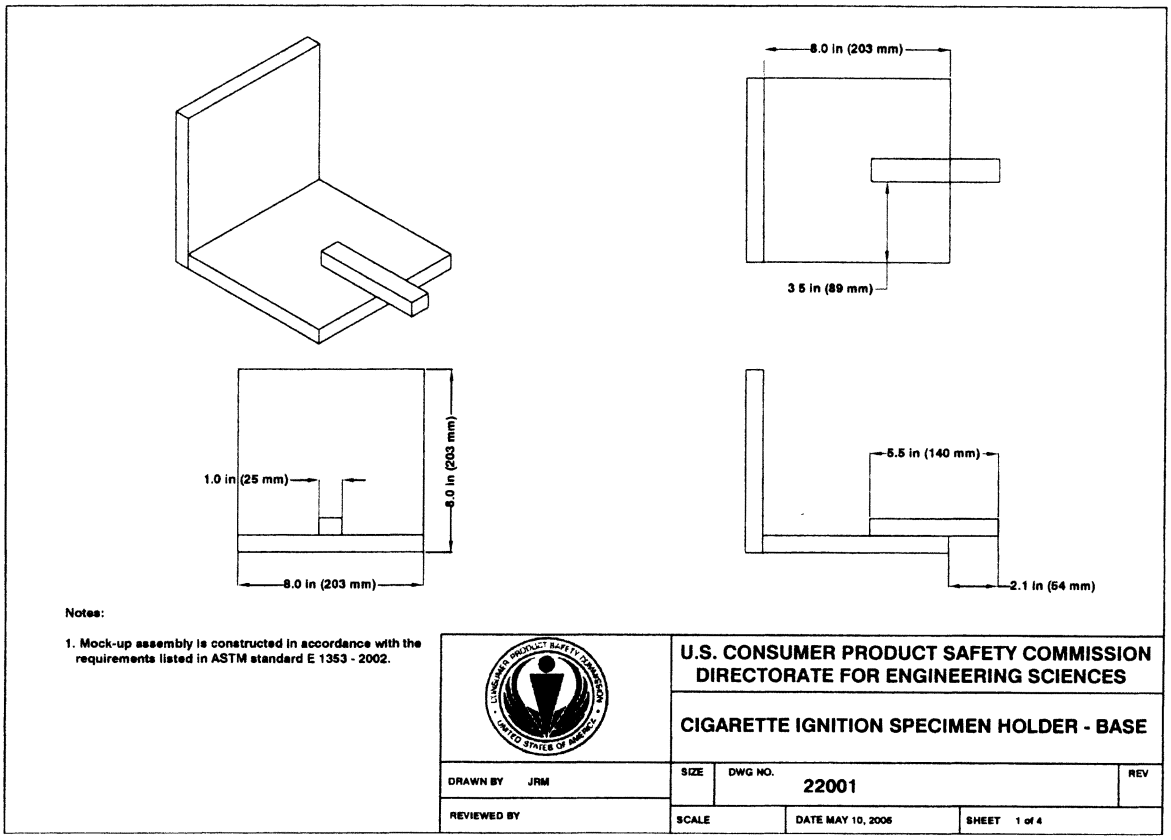


Figure 2 - Cigarette Ignition Specimen Holder - Movable Horizontal Support Panel

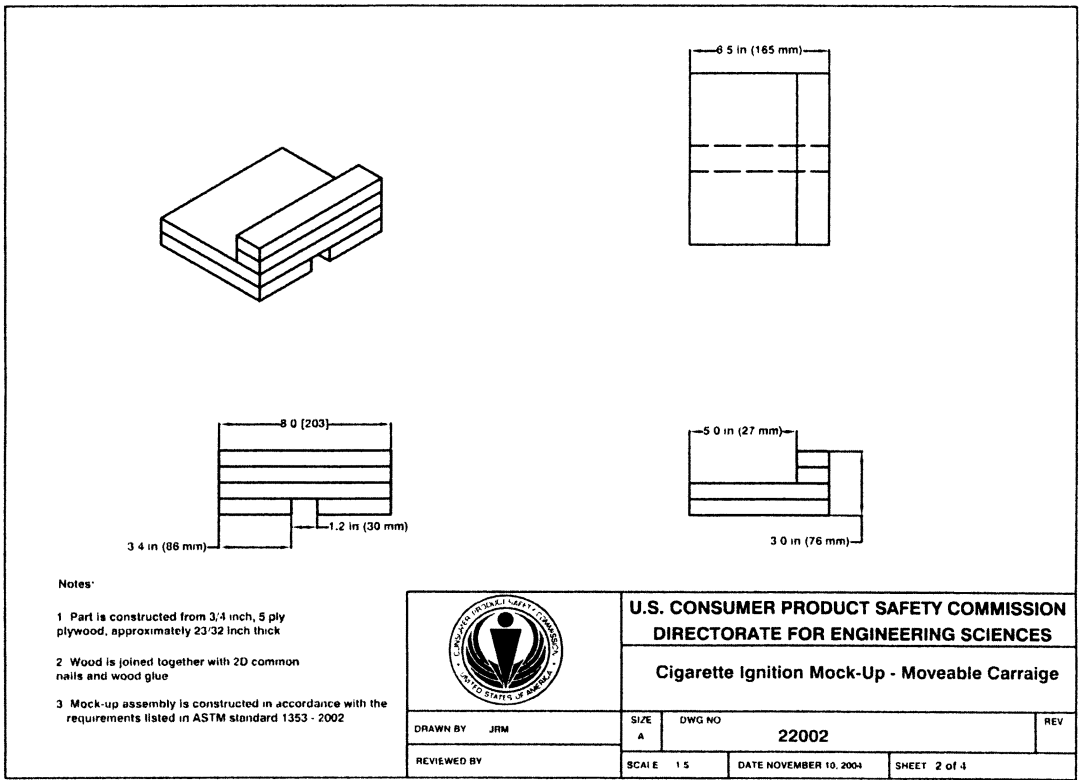


Figure 3 - Mockup Assembly for Upholstery Cover Fabric Smoldering Ignition Resistance Test

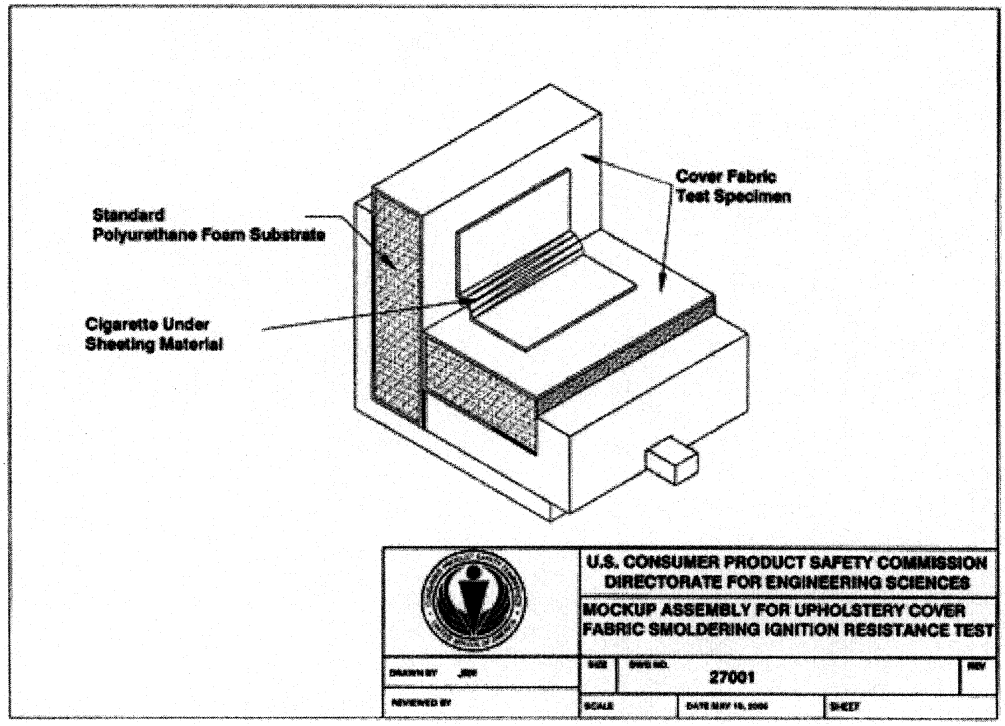


Figure 4 - Mockup Assembly for Interior Fire Barrier Material Smoldering Ignition Resistance Test

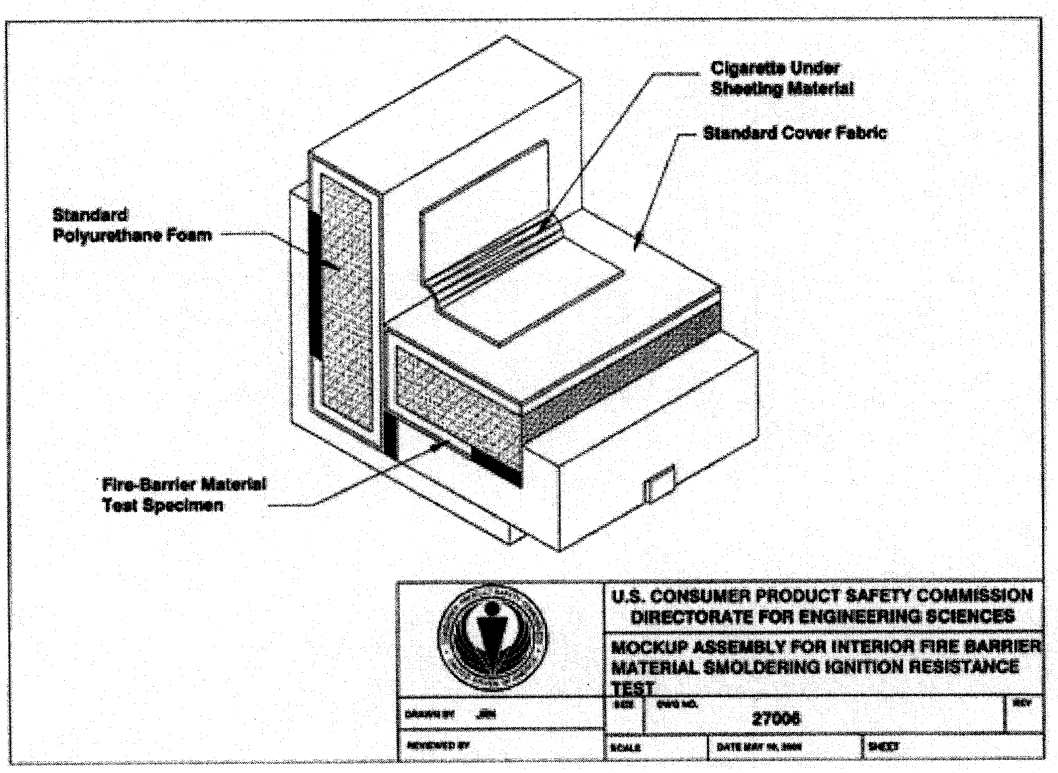


Figure 5 - Cut-Out Template Dimensions for Open Flame Test

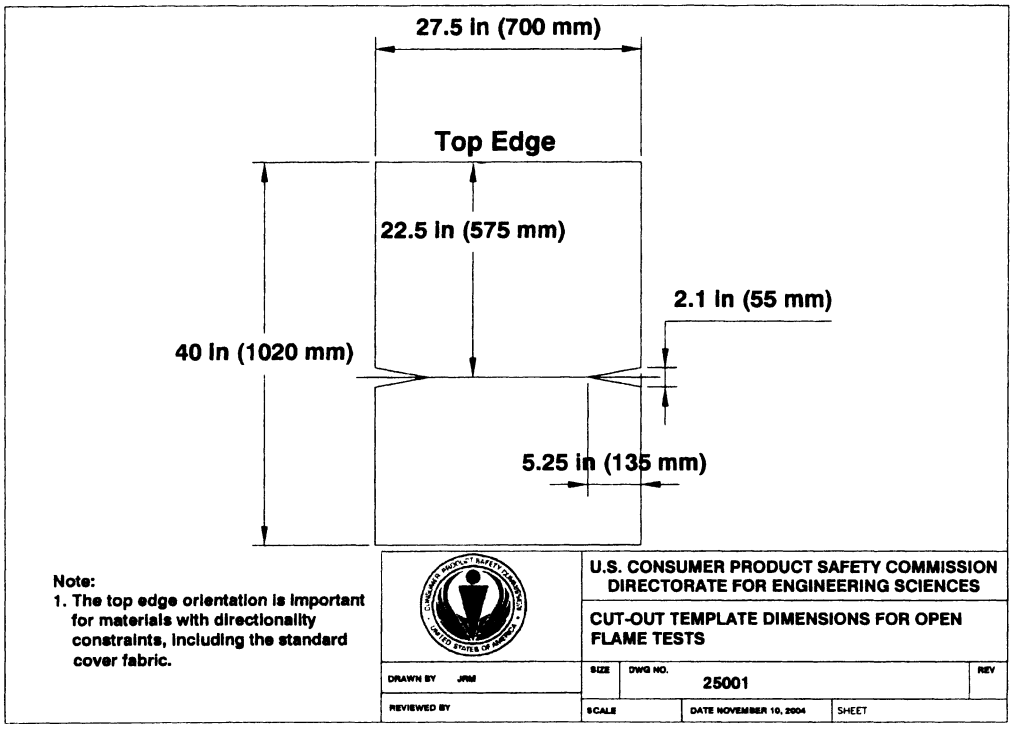
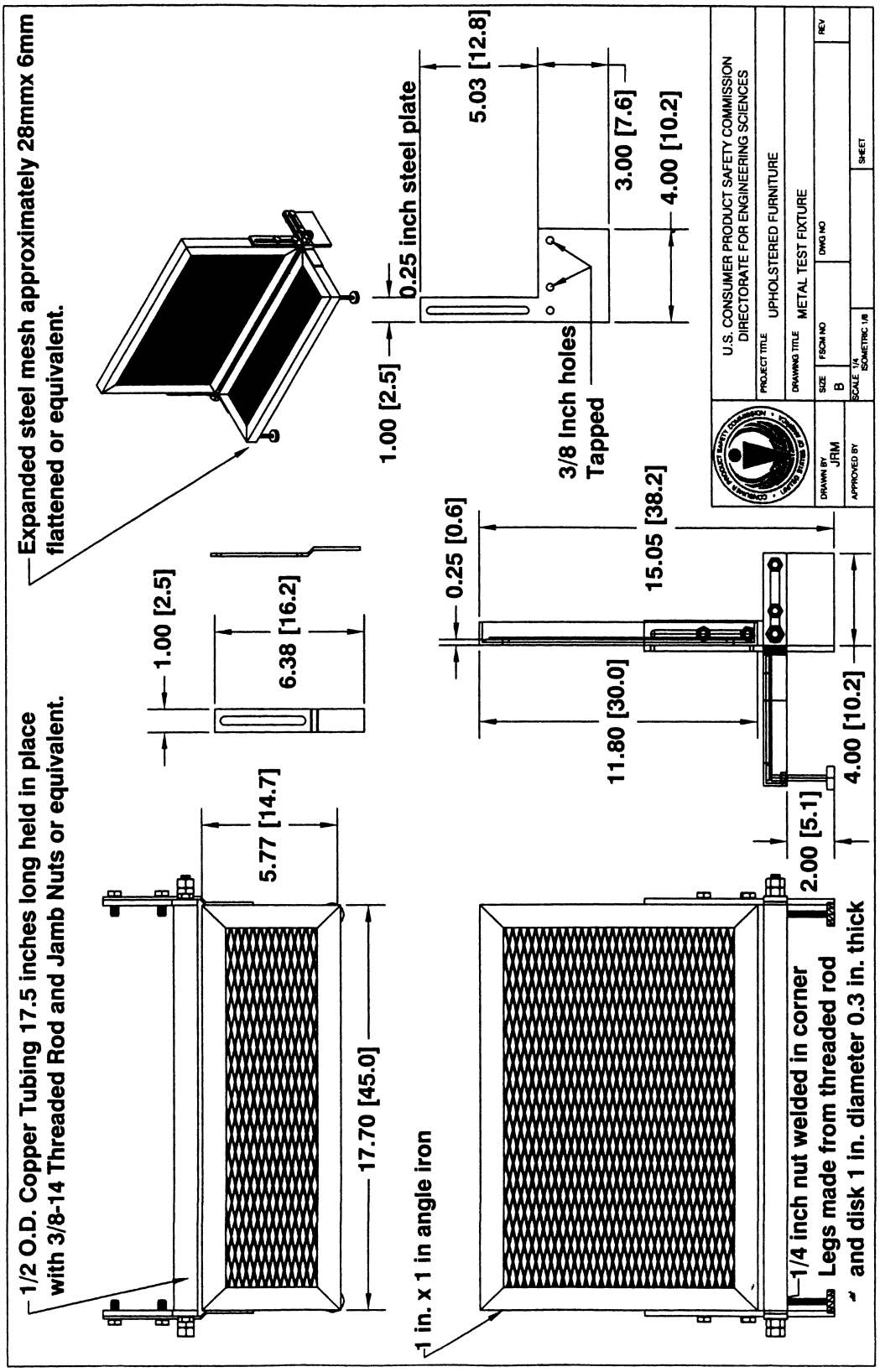


Figure 6 – Open Flame Metal Test Frame



[FR Doc. 08–768 Filed 3–3–08; 8:45 am]
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Federal Register

Tuesday,
March 4, 2008

Part III

Department of Labor

Office of Labor-Management Standards

29 CFR Part 403
Labor Organization Annual Financial Reports; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 403

RIN 1215–AB64

Labor Organization Annual Financial Reports

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor's Employment Standards Administration (''ESA'') proposes to promulgate a rule that establishes a form to be used by labor organizations to file trust annual financial reports with ESA's Office of Labor-Management Standards (''OLMS''), provides appropriate instructions, and revises relevant sections of 29 CFR Part 403 relating to such reports. The proposed changes are made pursuant to section 208 of the Labor-Management Reporting and Disclosure Act (''LMRDA''), 29 U.S.C. 438. The proposed rule will apply prospectively.

DATES: Comments must be received on or before April 18, 2008.

ADDRESSES: You may submit comments, identified by RIN 1215–AB64, only by the following methods:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *www.regulations.gov.* To locate the proposed rule, use key words such as ''Labor-Management Standards'' or ''Labor Organization Annual Financial Reports'' to search documents accepting comments. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

Mail: Mailed comments should be sent to: Kay H. Oshel, Director of the Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210.

Because of security precautions the Department continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments.

OLMS recommends that you confirm receipt of your mailed comments by contacting (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877–8339 (TTY/TDD).

Only those comments submitted through *www.regulations.gov,* hand-delivered, or mailed will be accepted.

Comments will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Director of the Office of Policy, Reports and Disclosure, at: Kay H. Oshel, U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, (202) 693–1233 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This proposed rule is issued pursuant to section 208 of the LMRDA, 29 U.S.C. 438. Section 208 authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions. Secretary's Order 4–2007, issued May 2, 2007, and published in the **Federal Register** on May 8, 2007 (72 FR 26159), contains the delegation of authority and assignment of responsibility for the Secretary's functions under the LMRDA to the Assistant Secretary for Employment Standards and permits re-delegation of such authority. The proposal implements section 201 of the LMRDA, which requires covered labor organizations to file annual, public reports with the Department, detailing the labor organization's cash flow during the reporting period, and identifying its assets and liabilities, receipts, salaries and other direct or indirect disbursements to each officer and all employees receiving $10,000 or more in aggregate from the labor organization, direct or indirect loans (in excess of $250 aggregate) to any officer, employee, or member, loans (of any amount) to any business enterprise, and other disbursements. 29 U.S.C. 431(b). The statute requires that such information shall be filed ''in such detail as may be necessary to disclose [a labor organization's] financial conditions and operations.'' *Id.*

Section 208 directs the Secretary to issue rules ''prescribing reports concerning trusts in which a labor organization is interested'' as she ''may find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements.'' 29 U.S.C. 438. Section 3(l) of the LMRDA provides:

• ''Trust in which a labor organization is interested'' means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

29 U.S.C. 402(l).

II. Background

A. Introduction

The Department proposes to establish a Form T–1 to capture financial information pertinent to ''trusts in which a labor organization is interested'' (''section 3(l) trusts''), information that historically has largely gone unreported despite the trusts' significant effect on labor organization financial operations and their members' own interests. This proposal is part of the Department's continuing effort to better effectuate the reporting requirements of the LMRDA. The LMRDA's various reporting provisions are designed to empower labor organization members by providing them the means to maintain democratic control over their labor organizations and ensure a proper accounting of labor organization funds. Labor organization members are better able to monitor their labor organization's financial affairs and to make informed choices about the leadership of their labor organization and its direction when labor organizations provide financial information required by the LMRDA. By reviewing the reports, a member may ascertain the labor organization's priorities and whether they are in accord with the member's own priorities and those of fellow members. At the same time, this transparency promotes both the labor organization's own interests as a democratic institution and the interests of the public and the government. Furthermore, the LMRDA's reporting and disclosure provisions, together with the fiduciary duty provision, 29 U.S.C. 501, which directly regulates the primary conduct of labor organization officials, operate to safeguard a labor organization's funds from depletion by improper or illegal means. Timely and complete reporting also helps deter labor organization officers or employees from embezzling or otherwise making improper use of such funds.

The proposed rule helps brings the reporting requirements for labor organizations and section 3(l) trusts in line with contemporary expectations for the disclosure of financial information. Today labor organizations are more like

modern corporations in their structure, scope, and complexity than the labor organizations of 1959.[1] The balance between wages/salaries paid to workers and their ''other compensation'' has changed significantly during this time. For example, in 1966, over 80 percent of total compensation consisted of wages and salaries, with less than 20 percent representing benefits. U.S. Department of Labor, *Report on the American Workforce* (2001) 76, 87. By 2007, wages dropped to 71.8 percent of total compensation and benefits grew to 29.2 percent of the compensation package. U.S. Department of Labor, Bureau of Labor Statistics Chart on Total Benefits, available at *http://data.bls.gov/cgi-bin/surveymost.* Moreover, labor organization members today are better educated, more empowered, and more familiar with financial data and transactions than ever before. Labor organization members, no less than consumers, citizens, or creditors, expect access to relevant and useful information in order to make fundamental investment, career, and retirement decisions, evaluate options, and exercise legally guaranteed rights.

In August and September of 2007, Department officials met with representatives of the community that would be affected by the proposed Form T–1, including officials of labor organizations and their legal counsel, to hear their views on the need for reform and the likely impact of changes that might be made. The Department developed its proposal with these discussions in mind and it requests comments from this community and other members of the public on any and all aspects of the proposal.

B. The LMRDA's Reporting and Other Requirements

In enacting the LMRDA in 1959, a bipartisan Congress made the legislative finding that in the labor and management fields ''there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.'' 29 U.S.C. 401(a). The statute was designed to remedy these various ills through a set of integrated provisions aimed at labor organization governance and management. These include a ''bill of rights'' for labor organization members, which provides for equal voting rights, freedom of speech and assembly, and other basic safeguards for labor organization democracy, *see* 29 U.S.C. 411–415; financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies, *see* 29 U.S.C. 431–436, 441; detailed procedural, substantive, and reporting requirements relating to labor organization trusteeships, *see* 29 U.S.C. 461–466; detailed procedural requirements for the conduct of elections of labor organization officers, *see* 29 U.S.C. 481–483; safeguards for labor organizations, including bonding requirements, the establishment of fiduciary responsibilities for labor organization officials and other representatives, criminal penalties for embezzlement from a labor organization, a prohibition on certain loans by a labor organization to officers or employees, prohibitions on employment by a labor organization of certain convicted felons, and prohibitions on payments to employees, labor organizations, and labor organization officers and employees for prohibited purposes by an employer or labor relations consultant, *see* 29 U.S.C. 501–505; and prohibitions against extortionate picketing, retaliation for exercising protected rights, and deprivation of LMRDA rights by violence, *see* 29 U.S.C. 522, 529, 530.

The LMRDA was the direct outgrowth of a Congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, chaired by Senator John McClellan of Arkansas. In 1957, the committee began a highly publicized investigation of labor organization racketeering and corruption; and its findings of financial abuse, mismanagement of labor organization funds, and unethical conduct provided much of the impetus for enactment of the LMRDA's remedial provisions. *See generally* Benjamin Aaron, *The Labor-Management Reporting and Disclosure Act of 1959,* 73 Harv. L. Rev. 851, 851–55 (1960). During the investigation, the committee uncovered a host of improper financial arrangements between officials of several international and local labor organizations and employers (and labor consultants aligned with the employers) whose employees were represented by the labor organizations in question or might be organized by them. Similar arrangements were also found to exist between labor organization officials and the companies that handled matters relating to the administration of labor organization benefit funds. *See generally Interim Report of the Select Committee on Improper Activities in the Labor or Management Field,* S. Report No. 85–1417 (1957); *see also* William J. Isaacson, *Employee Welfare and Benefit Plans: Regulation and Protection of Employee Rights,* 59 Colum. L. Rev. 96 (1959).

Financial reporting and disclosure were conceived as partial remedies for these improper practices. As noted in a key Senate Report on the legislation, disclosure would discourage questionable practices (''The searchlight of publicity is a strong deterrent.''); aid labor organization governance (Labor organizations will be able ''to better regulate their own affairs. The members may vote out of office any individual whose personal financial interests conflict with his duties to members''); facilitate legal action by members against ''officers who violate their duty of loyalty to the members''; and create a record (The reports will furnish a ''sound factual basis for further action in the event that other legislation is required''). S. Rep. No. 187 (1959) 16 *reprinted in 1 NLRB Legislative History of the Labor-Management Reporting and Disclosure Act of 1959* 412.

The Department has developed several forms for implementing the LMRDA's financial reporting requirements. The annual reports required by section 202(b) of the Act, 29 U.S.C. 432(b) (Form LM–2, Form LM–3, and Form LM–4), contain information about a labor organization's assets, liabilities, receipts, disbursements, loans to officers and employees and business enterprises, payments to each officer, and payments to each employee of the labor organization paid more than $10,000 during the fiscal year. The reporting detail required of labor organizations, as the Secretary has established by rule, varies depending on the amount of the labor organization's annual receipts. 29 CFR 403.4.

Labor organizations with annual receipts of at least $250,000 and all labor organizations in trusteeship (without regard to the amount of their annual receipts) must file the Form LM–2. 29 CFR 403.2–403.4. This form may be filed voluntarily by any other labor organization. The Form LM–2 now requires receipts and disbursements to

[1] There are now more large labor organizations affiliated with a national or international body then ever before. In 2006, 4,452 labor organizations, including 95 national and international labor organizations, reported $250,000 or more in total annual receipts.

be reported by functional categories, such as representational activities; political activities and lobbying; contributions, gifts, and grants; union administration; and benefits. Further, the form requires filers to allocate the time their officers and employees spend according to functional categories, as well as the payments that each of these officers and employees receive, and it compels the itemization of certain transactions totaling $5,000 or more. This form must be electronically signed and filed with the Department.[2]

The labor organization's president and treasurer (or its corresponding officers) are personally responsible for filing the reports and for any statement in the reports known by them to be false. 29 CFR 403.6. These officers are also responsible for maintaining records in sufficient detail to verify, explain, or clarify the accuracy and completeness of the reports for not less than five years after the filing of the forms. 29 CFR 403.7. A labor organization ''shall make available to all its members the information required to be contained in such reports'' and ''shall * * * permit such member[s] for just cause to examine any books, records, and accounts necessary to verify such report[s].'' 29 CFR 403.8(a).

The reports are public information. 29 U.S.C. 435(a). The Secretary is charged with providing for the inspection and examination of the financial reports, 29 U.S.C. 435(b); for this purpose, OLMS maintains: (1) A public disclosure room where copies of such reports filed with OLMS may be reviewed and; (2) an online public disclosure site, where copies of such reports filed since the year 2000 are available for the public's review.

III. Proposal

A. Introduction

Labor organization members need to be provided with information about the finances and operation of section 3(l) trusts, which, by statutory definition are established and maintained primarily to provide benefits to the members and/or their beneficiaries. 29 U.S.C. 402(l). Section 3(l) trusts are created for a myriad of purposes; common examples include credit unions, strike funds, redevelopment or investment groups, training funds, apprenticeship programs, pension and welfare plans, building funds, and educational funds. These trusts are funded in a number of different ways. Some may be funded with employer contributions and jointly administered by trustees appointed by labor organizations and employers. By requiring that labor organizations file the Form T–1, labor organization members and the public will receive the same benefit of transparency they now receive under the Form LM–2. Under this proposal, any labor organization or trust official who places their own personal financial interests above their duty to the labor organization and the trust—and third parties complicit with these officials—will find it more difficult to circumvent and evade their legal obligations.

The Department proposes to require a labor organization with total annual receipts of $250,000 or more to file a Form T–1 for each trust of the type defined by section 3(l) of the LMRDA, 29 U.S.C. 402(l) (defining ''trust in which a labor organization is interested'') where the labor organization during the reporting period, either alone or in combination with other labor organizations, (1) selects or appoints the majority of the members of the trust's governing board, or (2) contributes more than 50 percent of the trust's revenue; contributions made on behalf of the labor organization or its members shall be considered the labor organization's contribution.

The proposed Form T–1 uses the same basic template as prescribed for the Form LM–2. Both forms require the labor organization to provide specified aggregated and disaggregated information relating to the financial operations of the labor organization and the trust. Typically, a labor organization will be required to provide information on the Form T–1 explaining certain transactions by the trust (such as disposition of property by other than market sale, liquidation of debts, loans or credit extended on favorable terms to officers and employees of the trust); and identifying major receipts and disbursements by the trust during the reporting period. The proposed Form T–1, however, is shorter and requires less information than the Form LM–2. As proposed, the Form T–1, unlike the Form LM–2, does not require that receipts and disbursements be identified by functional category. The proposed Form T–1 includes: 14 questions that identify the trust, six yes/no questions covering issues such as whether any loss or shortage of funds was discovered during the reporting year and whether the trust had made any loans to officers or employees of the labor organizations at terms below market rates, statements regarding the total amount of assets, liabilities, receipts and disbursements of the trust; a schedule that separately identifies any individual or entity from which the trust receives $10,000 or more, individually or in the aggregate, during the reporting period; a schedule that separately identifies any entity or individual that received disbursements that aggregate to $10,000 or more, individually or in the aggregate, from the trust during the reporting period and the purpose of disbursement; and a schedule of disbursements of $10,000 or more to officers and employees of the trust. Under the proposal, exceptions are provided for labor organizations with section 3(l) trusts where the trust, as a political action committee (''PAC'') or a political organization (the latter within the meaning of 26 U.S.C. 527), submits timely, complete and publicly available reports required of them by federal or state law with government agencies. A partial exception is provided for a trust for which an audit was conducted in accordance with prescribed standards and the audit is made publicly available. As proposed, a labor organization choosing to use this option must complete and file the first page of the Form T–1 and a copy of the audit.

The Department specifically invites comments on whether the trust's ''employer identification number'' (''EIN'') should be reported on the first page of the Form T–1. This number could be used by members of labor organizations to cross-check the information on the Form T–1 with other reports submitted by the trust, such as its filings with the Internal Revenue Service (''IRS'').

This proposal contains many of the same features proposed by the Department in 2002 and incorporates some changes in the 2003 and 2006 final rules, which are discussed below. The proposal limits the reporting obligation to those labor organizations that alone or in combination with other labor organizations maintain management control or financial domination over a section 3(l) trust. For purposes of measuring a labor organization's financial dominance, as discussed below, funds paid into the trust by an employer on behalf of the labor organization or its members are treated the same as contributions made from the labor organization's own funds.

Two threshold requirements that were contained in the 2003 and 2006 rules relating to the amount of a labor organization's contributions to a trust ($10,000 per annum) and the amount of the contributions received by a trust ($250,000 per annum) are not included in the proposal. The Department believes that the labor organization's

[2] The Form LM–2 and its instructions are published at 68 FR 58449–523 (Oct. 9, 2003) and are available at *http://www.olms.dol.gov.* Copies of the Form LM–3 and Form LM–4 are also available at *http://www.olms.dol.gov.*

control over the trust either alone or with other labor organizations, measured by its selection of a majority of the trust's governing body or its majority share of receipts during the reporting period, provides the appropriate gauge for determining whether a Form T–1 must be filed by the participating labor organization. In contrast to the 2003 and 2006 rules, the Department's proposal does not include an exemption for section 3(l) trusts that are part of employee benefit plans that file a Form 5500 Annual Return/Report under the Employee Retirement Income Security Act (''ERISA'').

B. Judicial Review of Earlier Form T–1 Rulemaking

This proposal follows the Department's earlier efforts to implement a Form T–1 reporting obligation. The proposal is an outgrowth of these earlier efforts and takes into account the guidance provided by the United States Court of Appeals for the District of Columbia Circuit in its 2005 review of the 2003 Form T–1 rule, 68 FR 58374 (*American Federation of Labor and Congress of Industrial Organizations* v. *Chao,* 409 F.3d 377 (2005)).

In November 2003, the American Federation of Labor and Congress of Industrial Organizations (''AFL–CIO'') filed a complaint against the Department, challenging the combined Form LM–2 and Form T–1 rule. The suit was filed with the U.S. District Court for the District of Columbia; through this action, the AFL–CIO asked the court to order temporary, preliminary, and permanent relief to enjoin and vacate the Department's rule. The rule was upheld on its merits by the district court (*AFL-CIO* v. *Chao,* 298 F.Supp.2d 104 (D.D.C. 2004). On appeal, the D.C. Circuit in its 2005 opinion unanimously upheld the Form LM–2 rule as a reasonable exercise of the Department of Labor's LMRDA rulemaking authority. In a divided decision, however, the court vacated the Form T–1 rule because, in its view, the Department exceeded its authority by ''requiring general trust reporting.'' 409 F.3d at 378–79, 391. The court framed the issue before it as ''whether Form T–1 comports with the statutory requirements that the Department 'find [such rule is] necessary to prevent' evasion of LMRDA Title II reporting requirements.'' *Id.* at 386 (quoting section 208 of the LMRDA, 29 U.S.C. 438).

Given what it viewed as the ambiguity inherent in the word ''necessary'' as used in section 208 (authorizing reports ''necessary to prevent circumvention or evasion of * * * reporting requirements''), the court examined the Form T–1 portion of the rule to determine whether the Department's interpretation of the statute was permissible. *Id.* at 386–87; *see also Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843 (1984). The AFL–CIO argued that the Department's Form T–1 rule was impermissible, in part, because it encompassed joint trusts, which by operation of statute were independent of a labor organization's control. 409 F.3d at 388; *see* 29 U.S.C. 186(c). In rejecting this argument, the court noted that the statutory definition of ''trust in which a union is interested,'' 29 U.S.C. 402(l), included joint trusts, such as Taft-Hartley employer-funded benefit plans, and agreed with the Department's interpretation that such trusts could be used to evade the reporting requirements. 409 F.3d at 387–88. The court agreed with the Department's reasoning that ''[s]ince the money an employer contributes to such a 'trust' * * * might otherwise have been paid directly to the workers in the form of increased wages and benefits, the members * * * have a right to know what funds were contributed, how the money is managed and how it is being spent.'' *Id.* at 387. The court held that ''[s]ection 208 does not limit the [Department] to requiring reporting only in order to disclose transactions involving the misuse of labor organization members' funds because leaving the decision about disclosure to such trusts * * * would allow unions to circumvent or evade reporting on the use of members' funds diverted to the trust.'' *Id.* at 388–89.

The court recognized that reports on trusts that reflect a labor organization's financial condition and operations are within the Department's rulemaking authority, including trusts ''established by one or more unions or through collective bargaining agreements calling for employer contributions, [where] the union has retained a controlling management role in the organization,'' and also those ''established by one or more unions with union members' funds because such establishment is a reasonable indicium of union control of that trust.'' *Id.* The court acknowledged that the Department's findings in support of its rule were based on particular situations where reporting about trusts would be necessary to prevent evasion of the related labor organizations' own reporting obligations. *Id.* at 387–88. One example included a situation where ''trusts [are] funded by union members' funds from one or more unions and employers, and although the unions retain a controlling management role, *no individual union* wholly owns or dominates the trust, and therefore the use of the funds is not reported by the related union.'' *Id.* at 389 (emphasis added). In citing these examples, the court explained that ''absent circumstances involving dominant control over the trust's use of union members' funds or union members' funds constituting the trust's predominant revenues, a report on the trust's financial condition and operations would not reflect on the related union's financial condition and operations.'' *Id.* at 390. For this reason, while acknowledging that there are circumstances under which the Secretary may require a report, the court disapproved of a broader application of the rule to require reports by any labor organization simply because the labor organization satisfied a reporting threshold (a labor organization with annual receipts of at least $250,000 that contributes at least $10,000 to a section 3(l) trust with annual receipts of at least $250,000). *Id.*

In reaching its conclusion, the court rejected an underlying premise of the rule that a labor organization's appointment of a single member to a trust's governing board could trigger a reporting obligation, even though the labor organization's contribution to the trust constituted a fraction of the trust's total revenues. *Id.* The court explained that ''[w]here a union has minimal control over trust fund spending and a union's contribution is so small a part of the trust's revenues, and the trust is not otherwise controlled by unions or dominated by union members' funds, the trust lacks the characteristics of the unreported transactions in the examples on which the [Department] based the final rule.'' *Id.* at 391. In these circumstances, in contrast to the examples relied upon by the Department, the element of management control or financial dominance is missing. *Id.*

In light of the decision by the D.C. Circuit and guided by its opinion, the Department again reviewed the proposal as it related to the Form T–1 and the comments received on the proposal. The Department then issued a final rule on September 29, 2006, but the rule was vacated on procedural grounds by the U.S. District Court for the District of Columbia in *AFL–CIO* v. *Chao,* 496 F.Supp.2d 76 (D.D.C. 2007). In light of this court decision, the Department provides this new proposal for notice and comment.

C. Reasons for the Form T–1

The proposed Form T–1 closes a reporting gap under the Department's former rule whereby labor organizations were only required to report on ''subsidiary organizations.'' This proposal is designed to provide labor organization members a proper accounting of how their labor organization's funds are invested or otherwise expended by the trust. Labor organization members have an interest in obtaining information about funds provided to a trust for the member's particular or collective benefit whether solely administered by the labor organization or a separate, jointly administered governing board. Because the money an employer contributes to such a trust for the labor organization members' benefit might otherwise have been paid directly to a labor organization's members in the form of increased wages and benefits, the members on whose behalf the financial transaction was negotiated have a right to know what funds were contributed, how the money is managed, and how it is being spent. By reviewing the Form T–1, labor organization members will receive information on funds that would be accounted for on Form LM–2 but for their management through the section 3(l) trust.

The proposed rule will make it more difficult for a labor organization, its officials, or other parties with influence over the labor organization to avoid, simply by transferring money from the labor organization's books to the trust's books, the basic reporting obligation that would apply if the funds had been retained by the labor organization. Although the proposal will not require a Form T–1 to be filed for all section 3(l) trusts in which a labor organization participates, it will be required where a labor organization, alone or in combination with other labor organizations, appoints or selects a majority of the members of the trust's governing board or where contributions by or on behalf of labor organizations or their members represent greater than 50 percent of the revenue of the trust. Thus, the rule follows the instruction in *AFL–CIO* v. *Chao,* where the D.C. Circuit concluded that the Secretary had shown that trust reporting was necessary to prevent evasion or circumvention where ''trusts [are] established by one or more unions with union members' funds because such establishment is a reasonable indicium of union control of the trust,'' as well as where there are characteristics of ''dominant union control over the trust's use of union members' funds or union members' funds constituting the trust's predominant revenues.'' 409 F.3d at 389, 390.

Labor organization officials and trustees both owe a fiduciary duty to their labor organization and the trust, respectively, but the Department's case files reveal numerous examples of embezzlement of funds held by both labor organizations and their section 3(l) trusts.[3] The Form T–1, by disclosing information to labor organization members, the true beneficiaries of such trusts, will increase the likelihood that wrongdoing is detected and may deter individuals who might otherwise be tempted to divert funds from the trusts. *See* Archibald Cox, *Internal Affairs of Labor Organizations Under the Labor Reform Act of 1959,* 58 Mich. L. Rev. 819, 827 (1960) (''The official whose fingers itch for a 'fast buck' but who is not a criminal will be deterred by the fear of prosecution if he files no report and by fear of reprisal from the members if he does'').

Because the labor organization's obligation to submit a Form T–1 overlaps with the responsibility of labor organization officials to disclose payments received from the trust, the prospect that one party may report the payment increases the likelihood that a failure by the other party to report the payment will be detected. Moreover, given the increased transparency that results from the Form T–1 reporting, in some instances the proposed rule may cause the parties to reconsider the primary conduct that would trigger the reporting requirement. As discussed above, the LMRDA's primary reporting obligation (Forms LM–2, LM–3, and LM–4) applies to labor organizations as institutions; other important reporting obligations under the LMRDA apply to officers and employees of labor organizations (Form LM–30), requiring them to report any conflicts between their personal financial interests (and the duty they owe to the labor organization they serve) and to employers and labor relations consultants who must report payments to labor organizations and their representatives (Form LM–10). *See* 29 U.S.C. 432; 29 U.S.C. 433. Thus, requiring labor organizations to report the information requested by the Form T–1 rule provides an essential check for labor organization members and the Department to ensure that labor organizations, their officials, and employers are accurately and completely fulfilling their reporting duties under the Act, obligations that can easily be ignored without fear of detection if reports related to trusts are not required.

As an illustration of how this check will work, consider an instance in which a trust identifies a $15,000 payment to a company for duplicating services. Under the proposal, the labor organization must identify the company and the purpose of the payment. With this information, coupled with information about a labor organization official's ''personal business'' interests in the company, a labor organization member or the Department may discover whether the official has reported this payment on a Form LM–30. Additional information from the labor organization's Form LM–2 might allow a labor organization member to ascertain whether the trust and the labor organization have used the same printing company and whether there was a pattern of payments by the trust and the labor organization from which an inference could be drawn that duplicate payments were being made for the same services. Upon further inquiry into the details of the transactions, a member or the government might be able to determine whether the payments masked a kickback or other conflict-of-interest payment, and, as such, reveal an instance where the labor organization, a labor organization official, or an employer may have failed to comply with their reporting obligations under the Act. Furthermore, the proposal will provide a missing piece to one part of the Department's crosscheck system that correlates reported holdings and transactions by party, description, and reporting period and thereby helps identify any deviations in the reported details, including instances where the reporting obligation appears reciprocal, but one or more parties have not reported the matter.

Under the instructions in effect prior to the 2003 rule, a labor organization was obliged to provide financial information about a section 3(l) trust only if the trust was a ''subsidiary'' of the reporting labor organization, *i.e.*, an entity, as defined by the Department, that is wholly owned, wholly controlled, and wholly financed by the labor organization. Thus, the former rule, which was crafted shortly after the

[3] The fiduciary duty of the trustees to refrain from taking a proscribed action has never been thought to be sufficient by itself to protect the interests of a trust's beneficiaries. Although a fiduciary's own duty to the trust's grantors and beneficiaries include disclosure and accounting components (see Restatement (Third) of Agency § 8.01 (T.D. No. 6, 2005) *et seq.*; see also 1 American Law Institute, Principles of Corporate Governance § 1.14 (1994)), public disclosure requirements, government regulation, and the availability of civil and criminal process, complement these obligations and help ensure a trustee's observance of his or her fiduciary duty.

LMRDA's enactment, required reporting by only a portion of the labor organizations that contributed to section 3(l) trusts, and, in many cases, no reporting at all. Currently, there is no enforceable form for trust reporting and the largest labor organizations, Form LM–2 filers, report only very limited and opaque information concerning trusts. This proposal will better effectuate the full disclosure intended under the LMRDA.

Many labor organizations now manage benefit plans for their members, maintain close business relationships with financial service providers such as insurance companies and investment firms, operate revenue-producing subsidiaries, and participate in foundations and charitable activities. As more labor organizations conduct their financial activities through sophisticated trusts, increased numbers of businesses have commercial relationships with such trusts, creating financial opportunities for labor organization officers and employees who may operate, receive income from, or hold an interest in, such businesses. The labor organizations' business relationships with outside firms and vendors that provide benefits and financial services to the labor organization and its members also increase the possibility that labor organization officers and employees may have financial interests in these businesses that might conflict with fiduciary obligations they owe to the labor organization and its members. In addition, employers also have fostered multi-faceted business interests, creating further opportunities for financial relationships between labor organizations, labor organization officials, employers, and other entities, including section 3(l) trusts.

Both historical and recent examples demonstrate the vulnerability of trust funds to misuse and misappropriation by labor organization officials and others. The McClellan Committee, as discussed above, provided several examples of labor organization officials using funds held in trust for their own purposes rather than for their labor organization and its members. Additional examples of the misuse of labor organization benefit funds and trust funds for personal gain may be found in the 1956 report of the Senate's investigation of welfare and pension plans, completed as the McClellan Committee was beginning its investigation. *See Welfare and Pension Plans Investigation, Final Report of the Comm. of Labor and Public Welfare,* S. Rep. No. 1734 (1956); *see also Note: Protection of Beneficiaries Under Employee Benefit Plans,* 58 Colum. L. Rev. 78, 85–89, 96, 107–08 (1958). Such problems continued, even after the passage of the LMRDA and ERISA. In the most comprehensive report concerning the influence of organized crime in some labor organizations, a presidential commission concluded that ''the plunder of labor organization resources remains an attractive end in itself.* * * The most successful devices are the payment of excessive salaries and benefits to organized crime-connected labor organization officials and the plunder of workers' health and pension funds.'' President's Commission on Organized Crime, *Report to the President and Attorney General, The Edge: Organized Crime, Business, and Labor Unions* 12 (1986).

The enactment of ERISA has ameliorated many of the historical problems, but many section 3(l) trusts are not covered by ERISA and even those that are covered do not file financial reports that provide transparency for LMRDA disclosures comparable to what will be provided by the proposed Form T–1. The Department has discovered numerous situations, as illustrated by the following examples, where funds held in section 3(l) trusts have been used in a manner that, if reported, would have been scrutinized by the members of the labor organization and this Department:

- A case in which no information was publicly disclosed about the disposition of tens of thousands of dollars (over $60,000 on average per month) by participating locals into a trust established to provide statewide strike benefits. No information was disclosed because the trust was established by a group of labor organization locals and not wholly controlled by any single labor organization.
- A case in which a credit union trust largely financed by a local labor organization had made large loans to labor organization officials but had not been required to report them because the trust was not wholly owned by any single local. (One local accounted for 97 percent of the credit union's funds on deposit). Membership in the credit union was limited to members of three locals; all of the credit union directors were local officials and employees. Four loan officers, three of whom were officers of the Local, received 61 percent of the credit union's loans.

Under the proposed rule, each labor organization in these examples would have been required to file a Form T–1 because each of these funds is a 3(l) trust. In each instance, the labor organization's contribution to the trust, including contributions made on behalf of the organization or its members, made alone or in combination with other labor organizations, represented greater than 50 percent of the trust's revenue in the one-year reporting period. The labor organizations would have been required to annually disclose for each trust the total value of its assets, liabilities, receipts, and disbursements. For each receipt or disbursement of $10,000 or more (whether singly or in the aggregate), the labor organization would have been required to provide: the name and business address of the individual or entity involved in the transaction(s), the type of business or job classification of the individual or entity; the purpose of the receipt or disbursement; its date, and amount. Further, the labor organization would have been required to provide additional information concerning any trust losses or shortages, the acquisition or disposition of any goods or property other than by purchase or sale; the liquidation, reduction, or write off of any liabilities without full payment of principal and interest, and the extension of any loans or credit to any employee or officer of the labor organization at terms below market rates, and any disbursements to officers and employees of the trust.

In developing this proposal, the Department also relies, in part, on information it received from the public on the 2002 proposal. In its comments on that proposal, a labor policy group identified multiple instances where labor organization officials were charged, convicted, or both, for embezzling or otherwise improperly diverting labor organization trust funds for their own gain, including the following: (1) Five individuals were charged with conspiring to steal over $70,000 from a local's severance fund; (2) two local labor organization officials confessed to stealing about $120,000 from the local's job training funds; (3) an administrator of a local's retirement plan was convicted of embezzling about $300,000 from the fund; (4) a local labor organization president embezzled an undisclosed amount from the local's disaster relief fund; (5) an employee of an international labor organization embezzled over $350,000 from a job training fund; (6) a former international officer, who had also been a director and trustee of a labor organization benefit fund, was convicted of embezzling about $100,000 from the labor organization's apprenticeship and training fund; (7) a former officer of a national labor organization was convicted of embezzling about $15,000 from the labor organization and about

$20,000 from the labor organization's welfare benefit fund; and (8) a former training director of a labor organization's pension and welfare fund was charged and convicted of receiving gifts and kickbacks from a vendor that provided training for labor organization members.

The comments received from labor organizations and their members on the 2002 proposal generally opposed any reporting obligation concerning trusts (beyond the requirement then applicable to the ''wholly-owned'' subset of section 3(l) trusts). Labor organization members, however, recommended generally greater scrutiny of labor organization trust funds. These commenters included several members of a single international labor organization. They explained that under the labor organization's collective bargaining agreements, the employer sets aside at least $.20 for each hour worked by a member and that this amount was paid into a benefit fund known as a ''joint committee.'' The commenters asserted that some of the funds were ''lavished on junkets and parties'' and that the labor organization used the joint committees to reward political supporters of the labor organization's officials. They stated that the labor organization refused to provide information about the funds, including amounts paid to ''union staff.'' From the perspective of one member, the labor organization did not want ''this conflict of interest'' to be exposed.

The need for this proposal is also demonstrated by additional examples of improper administration and diversion of funds from section 3(l) trusts. Labor organization officials in New York were convicted in a ''pension-fund fraud/kickback scheme'' where labor organization officials were bribed by members of organized crime to invest pension fund assets in corrupt investment vehicles. The majority of the funds were to be invested in legitimate securities, but millions of dollars were placed into a sham investment, the body of which was to be used to fund kickbacks to the labor organization officers with the hope that the return on investment from the majority of the legitimately invested assets would cover the amounts lost as kickbacks. *U.S.* v. *Reifler,* 446 F.3d 65 (2d Cir. 2006); *see The Final Report of the New York State Organized Crime Task Force: Corruption and Racketeering in the New York City Construction Industry* (1990) 27–29, 91–92, 182–84 (describing devices typically used by labor organization officials and third parties to divert trust funds for their own enrichment). In another case, nepotism and no-bid contracts depleted a labor organization's health and welfare funds of several million dollars. The problems associated with the fund included, among others, paying the son-in-law of a board member, a local labor organization official, a salary of $119,000 to manage a scholarship program that gave out $28,000 per year; paying a daughter of this board member $111,799 a year as a receptionist; and paying $123,000 for claims review work that required only a few hours of effort a week. *See* Steven Greenhouse, *Laborers' Union Tries to Oust Officials of Benefits Funds,* N.Y. Times, June 13, 2005, at B5.[4] If the Department's proposed rule had been in place, the members of the affected labor organizations, aided by the information disclosed in the labor organizations' Form T–1s, would have been in a much better position to discover the improper use of the trust funds and thereby minimize the injury to their stake in the trust. Further, the fear of discovery may have deterred the wrongdoers from engaging in the offending conduct in the first place.

As the foregoing discussion makes clear, the proposed Form T–1 rule will add necessary safeguards to deter circumvention and evasion of the LMRDA's reporting requirements.

Under the proposal, it will be more difficult for labor organizations and complicit trusts to avoid the disclosure required by the LMRDA. Labor organization members will be able to review financial information they may not otherwise have had, empowering them to better oversee their labor organization's officials and finances as contemplated by Congress.

D. Specific Aspects of the Proposed Form T–1

1. Determining Management Control or Financial Domination

In 2002, the Department proposed to require that any labor organization, regardless of its size or the proportion of the trust's receipts represented by its payments, file a Form T–1 if, among other conditions, it contributed $10,000 or more to a section 3(l) trust during the reporting period. The proposal, however, invited comment on whether adequate disclosure could be achieved instead by expanding the definition of ''subsidiary'' to include trusts that were closely related to the labor organization but not ''100% owned, controlled and financed by the [union].'' 67 FR 79285. The Department suggested that this alternative would borrow from the test, used in other contexts, to determine whether multiple companies constitute a ''single entity.'' The Department explained that this approach would be based on various factors, including an assessment as to the integration of the companies' operations and their common management.

In the 2003 rule, the Department explained that it had received only a few comments on the ''single entity'' test. After considering the comments, the Department determined that the test would be less effective than other approaches, because it could be easily evaded by labor organizations seeking to conceal their relationship with a trust. The Department further explained that even if information concerning the relationship between the trust and the labor organization was readily available, the test could prove difficult to apply and thus was a poor substitute for a ''bright line'' standard pegged to a specified dollar threshold. Several comments received by the Department suggested that the labor organization's control over, not merely its participation in, a trust should fix any reporting obligation, and thus objected to the Department's proposal imposing a general reporting obligation on all large labor organizations. The AFL-CIO's objection to the proposal was twofold: ''If the union does not control the trust, the trust cannot be used to circumvent the reporting requirements; and if the union does not control the trust it cannot compel the trust to divulge the detailed financial information [required].'' It explained: ''[T]he Department's proposal does not require that the union have effective control over the trust. Without de facto, or actual, control over a trust's financial management, a labor organization has no mechanism by which it can circumvent or evade the Act's reporting requirements.'' Further, even though the AFL-CIO did not embrace the ''single entity'' approach, it viewed this approach as ''a helpful starting point.'' While disagreeing with the mechanisms suggested by the Department, it acknowledged that the Department

[4] Various concerns about the administration of joint trusts are addressed in legal periodicals such as Note: Conflict of Interest Problems Arising from Union Pension Fund Loans, 67 Colum. L. Rev. 162 (1967), 162–63; and Stephen Fogdall, Exclusive Union Control of Pension Funds: Taft-Hartley's Ill-considered Prohibition, 4 U. Pa. J. Lab. & Emp. L. 215 (2001–2002), 228–31 (providing examples of misuse and exemplary use of trust funds). See also Stephen Brill, The Teamsters, 151, 201–16, 221–60 (discussing problems with administration of Teamster funds, especially the Central States Pension Fund); James B. Jacobs, Mobsters, Unions, and Feds (2006) 181 (describing the looting of Teamster Local 560's benefit funds); Robert Fitch, Solidarity for Sale (2006), 149–52 (misuse of New York Mason Tenders pension fund).

possessed the authority ''for developing an analytical framework for identifying 'significant trusts'' as to which financial disclosure should be required.'' A local labor organization, while generally opposed to the Form T–1, stated that ''it seems reasonable that ownership or control can only be attributed to parties holding over 50% ownership of an organization.''

The ''single entity'' alternative was mentioned in the D.C. Circuit's opinion in *AFL-CIO* v. *Chao,* but the court did not approve or disapprove of this approach. 409 F.3d at 390–91. Instead, the court focused its inquiry on the extent of the labor organizations' relationship with section 3(l) trusts and indicia of their management control or financial domination of the trusts. *Id.* at 388–89. As discussed previously, the appeals court found that the Secretary had not demonstrated how a labor organization's contribution of $10,000, an amount that could be infinitesimal given the trust's other contributions, could be indicative of the labor organization's ability to exercise any effective control over the trust.

The court indicated that the Secretary could require a labor organizations to file a Form T–1 where labor organizations exercise management control or financial domination over a trust. The court did not establish a control test, leaving the Department to fashion a test consistent with the LMRDA and its policy preferences. After considering various alternatives, including a case-by-case determination, or one based on whether a labor organization or labor organizations hold the largest but not predominant share of the trust's interests (or the contributions to the trust during a reporting period), the Department is proposing a bright line approach. Under the proposal, a labor organization is required to file a report only where it alone or in combination with other labor organizations (1) selects or appoints the majority of the members of the trust's governing board, or (2) contributes more than 50 percent of the trust's revenue during the annual reporting period; contributions made on behalf of the organization or its members shall be considered contributions by the labor organization.[5] The test is responsive to the concerns expressed by the D.C. Circuit in that the test looks to the relationship between the labor organization or labor organizations and the trust and relies on principles of management control and financial domination.

Under this proposal, Form T–1 reports would be required on Taft-Hartley trusts where the contributions by or on behalf of the labor organization or its members comprise a majority of the trust's receipts.[6] Taft-Hartley trusts are statutorily defined trusts, established by a labor organization for the sole and exclusive benefit of the contributing employer's employees, their families, and dependents that meet several prescribed conditions, including a written agreement with the employer(s) concerning the basis on which such payments are to be made and joint administration by an equal number of employee and employer representatives. *See* section 302(c) of the Labor Management Relations Act, 29 U.S.C. 186(c); *see* Steven J. Sacher, James S. Singer, *et al.*, editors, *Employee Benefits Law* (2d ed. BNA 2001) 179–83, 642–43, 1177–03. Typically the establishment of such trusts and their funding is set through collective bargaining. Such payments comprise a portion of the employer's labor expenses, along with salaries, wages, and employer administered benefits. Thus, the money paid into the trusts reflects payments that otherwise could be made directly to employees as wages, benefits, or both, but for their assignment to the trusts.

The administration of a Taft-Hartley fund is under the control of the labor organization and employer trustees, not the employees or their beneficiaries. While the disbursements from the funds often represent individual payments to employees or their beneficiaries by reason of health or other claims, payments also often reflect more collective interests of employees such as developing apprenticeship or vocational training programs or operating job targeting programs, payments that serve the interests of the labor organization. In such instances, the funds cover expenses that otherwise would be paid from the labor organization's general treasury and reported on the Form LM–2.

Under this proposal, management domination or financial control is determined by looking at the involvement of all labor organizations contributing to or managing the trust. As discussed above, the Department's experience, as noted by the D.C. Circuit in its 2005 opinion, demonstrates that participating labor organizations may ''retain a controlling management role, [even though] no individual union wholly owns or dominates the trust.'' 409 F.3d at 389. This occurs, for example, where a trust is created from the participation of several labor organizations with common affiliation, industry, or location, but none alone holds predominant management control over or financial stake in the trust. Absent the Form T–1, the contributing labor organizations, if so inclined, would be able to use the trust as a vehicle to expend pooled labor organization funds without the disclosure required by Form LM–2 and the members of these labor organizations would continue to be denied information vital to their interests. If a single labor organization may circumvent its reporting obligations when it retains a controlling management role or financially dominates a trust, then a group of labor organizations may also be capable of doing so. A rule directed to preventing a single labor organization from circumventing the law must, in all logic, be similarly directed to preventing multiple labor organizations from also evading their legal obligations.

Because labor organizations filing the Form LM–2 already are required to identify section 3(l) trusts on the Form LM–2, the proposed rule will not add any significant reporting burden with respect to identifying the section 3(l) trusts. The Form LM–2 requires labor organizations to provide the full name, address, and purpose of each section 3(l) trust in which it participates. The Form T–1 will be filed for only a subset of the labor organization's section 3(l) trusts. No Form T–1 will be required for any trust not required to be listed on the Form LM–2.

In most cases labor organizations already possess information to determine whether a Form T–1 is required for a particular section 3(l) trust. If a labor organization selects or appoints a member of the trust's governing board, it will know how the other members are selected and whether

[5] As a result, multiple unions may be required to report on a single trust. This aspect of the rule is discussed in detail below in section II D.7.

[6] A labor organization's obligation to report on section 3(l) trusts is based on the majority control and financial domination tests embodied in the proposed rule. Thus, the designation of a trust as a ''Taft-Hartley Trust,'' a ''welfare benefit trust,'' or other designation will not control the coverage question. Examples of trusts for which a Form T–1 may be required include training or educational funds, strike funds, and redevelopment or investment funds. Other examples, depending upon their particular characteristics, would include trusts such as Multiple Employer Welfare Arrangements, Multi-Employer Plans, Voluntary Employees' Beneficiary Associations, or other similar plans. This is not an exhaustive list. At the same time, a labor organization should also be mindful that a designation of an entity as something other than a trust or its description as a particular kind of trust does not except the labor organization from filing a Form T–1 for the entity if it meets the filing standards. Again, the coverage question is to be based on the majority control and financial domination tests embodied in the proposed rule.

the majority control prong of the reporting test is satisfied. In other situations, the section 3(l) trust in question will consist entirely of units of the same national or international labor organization. Here too, each labor organization participating in the trust will know whether the majority control prong of the test is satisfied and likely will possess information to determine whether the alternative financial domination prong of the test is met.

In some situations, the Department expects that labor organizations will have to contact the trusts to obtain information about whether the trust's ''pooled receipts'' from labor organizations constitute a majority of the trust's receipts during a reporting period. The trust can easily determine whether labor organizations have financial dominance by examining their accounting records. Finally, no specific information as to voting or contributions need be disclosed by the trust at this phase. Therefore, the trust will not be required to release any confidential information pertaining to financial contributions or control. The Department expects that labor organizations that do not already possess the information to determine whether they need to file a Form T–1 will be able to obtain this information simply by calling the trust. The Department invites comments on its assumptions concerning the information already possessed by labor organizations that will enable them to readily determine whether they must file a Form T–1 for their section 3(l) trusts and the relative ease by which they may obtain additional information from the section 3(l) trusts.

By tying the proposed reporting obligation to instances in which a labor organization (or labor organizations) selects (or select) a majority of the members on the trust's governing board or contributes a majority of its receipts during the reporting period, the Department has stayed well within the bounds established by the appeals court. At the same time, the Department recognizes that in other contexts, effective, de facto, or practical control is an appropriate measure of control and one that also would be consistent with the court's opinion. The Department is aware that some legal writers have suggested that labor organizations exercise effective control over many Taft-Hartley trusts notwithstanding the legal requirement that there be equal representation by labor organizations and employers on their governing boards. *See* Ronald H. Malone, *Criminal Abuses in the Administration of Private Welfare and Pension Plans: A Proposal for a National Enforcement Plan,* 1 S. Ill. U. L.J. (1976) 400, 406 (''An * * * alleged benefit of the Taft-Hartley plan is that joint control of the trust assets makes misappropriation less likely. However, experience indicates that the labor organization trustees will often functionally wrest control of such a fund from the employer trustees and destroy the theoretical benefits of joint-administration.''); Fogdall, *Exclusive Union Control of Pension Funds: Taft-Hartley's Ill-considered Prohibition,* 4 U. Pa. J. Lab. & Emp. L. at 221 (''A [multi-employer] fund * * * is easier for a union to dominate [than a joint plan with a single employer] because 'it puts the union in a position of having more trustees on a board than any single employer, creating de facto control of the fund by the union.' ''); *Protection of Beneficiaries*, 58 Colum. L. Rev. at 86 (''A significant contributing cause of many * * * irregularities is management's abdication of responsibility in jointly administered plans. Employer representatives all too often have taken the position that since payments to an employee fund are in lieu of wages, the money is the property of the employees to deal with as they will. Thus, the theoretical safeguard of joint control is dissipated, allowing those union administrators who may be unscrupulous or incompetent greater freedom to divert or mismanage funds.''). The Department invites comment on whether the observations made by these authors are accurate and, if so, for this reason or other independent reasons, whether the Department should establish a reporting threshold that is based on less than predominant union control over a section 3(l) trust.

2. Form T–1 Reporting Requirement Only Applies to the Largest Labor Organizations

The Department's proposal to require only labor organizations with annual receipts of at least $250,000 to file a Form T–1 tracks the mandatory filing threshold for the Form LM–2. This proposal is consistent with the 2003 and 2006 vacated rules. In 2002, however, the Department proposed that all labor organizations that contributed $10,000 or more to a ''significant'' section 3(l) trust file a Form T–1. A ''significant trust'' was defined as one having annual receipts of at least $200,000. Thus, under the 2002 proposal it was the size of the trust, not the size of the labor organization, that triggered the reporting obligation. In this regard, the 2002 proposal departed from the model proposed for the Form LM–2, where only labor organizations with annual receipts of at least $200,000 ($250,000 in the final rule) would be obliged to provide the kind of detailed reporting comparable to the Form T–1.

Many of the comments on the 2002 proposal expressed the view that the Form T–1 would impose a substantial burden on small labor organizations because they are usually staffed with part-time volunteers, with little computer or accounting experience and limited resources to hire professional services. In the 2003 rule, the Department explained that it had been persuaded by the comments that the relative size of a labor organization, as measured by its overall finances, would affect its ability to comply with the proposed Form T–1 reporting requirements. For this reason in the 2003 final rule, the Department excused from the Form T–1 reporting obligation any labor organization with annual receipts of less than $250,000. And, for the same reasons, this proposal establishes $250,000 in annual receipts for the labor organization as the mandatory filing threshold for the Form T–1.

The Department acknowledges that because the section 3(l) trust, not the reporting labor organization, will undertake the bulk of the recordkeeping burden, the size of the reporting labor organization may be less significant than it is in the Form LM–2 context. However, because only labor organizations with annual receipts of $250,000 or greater, as a general rule, will have had any direct experience with the recordkeeping and reporting software utilized in preparing the Form LM–2, the Department believes it appropriate to limit this particular reporting obligation to organizations with annual receipts of $250,000 or greater.

3. Elimination of Threshold Requirements In Prior Rules

This proposal does not include the requirement in the earlier rulemaking efforts that limited the mandatory Form T–1 filing to labor organizations that contributed $10,000 or more to the trust in a reporting year. As discussed below, given the structure of this proposal, this requirement has become superfluous and transparency will be improved by its removal. This requirement had been based on the Department's concern that labor organizations might have difficulty persuading trusts to provide a detailed accounting of the trust's financial activities if their stake in the trust was insubstantial in comparison with other contributions. However, under this proposal, no labor organization will need to file a Form T–

1 unless it alone or together with other labor organizations holds management control or financial domination over a trust. Thus, under these circumstances it is unlikely that any participating labor organization should have difficulty in obtaining from the trust the information needed to complete the Form T–1.

Additionally, OLMS's review of section 3(l) trusts has found that a number of such trusts do not receive any yearly contributions from a labor organization during a reporting period but still hold large amounts of labor organization-derived money. For example, one building trust had less than $200 in receipts other than investment income but held $802,323 in assets, in this case investments. The trust and the labor organization the trust was created to benefit had many of the same individuals serving as officers (five officers of the labor organization are among the seven individuals identified as officers and directors of the trust). Although this trust was reported on an IRS Form 990, it does not appear on any report filed with the Department. But for a Form T–1 reporting obligation, many of the labor organization's members would not even be aware of such a trust or its Form 990, and likely would remain uninformed if the Form T–1 reporting obligation was contingent on the labor organization's $10,000 contribution to the trust.

In the vacated rules, the Department limited the Form T–1 reporting obligation to only a subset of section 3(l) trusts: only those trusts that received $250,000 or more in annual receipts. Based on the Department's recent experience with section 3(l) trusts, however, it has determined that the retention of this requirement could operate to deny information about trusts to labor organization members whose labor organizations have a substantial investment in the trust notwithstanding the absence of significant contributions by the labor organization during the reporting period. For example, one section 3(l) trust reported on its IRS Form 990 assets of $434,501, but its only source of receipts was rent, $46,285, which was more than offset by its rental expenses of $75,483, *i.e.*, its net receipts were −$29,198. Another trust, on its Form 990, reported $123,573,716 in assets, and $1,354,258 in annual receipts only because it sold a single asset worth over $1.1 million. This trust's sole source of annual receipts is rent in the amount of $203,858. It is assumed that the labor organization has managerial control over the trusts in the above examples. These trusts would not be reported on a Form T–1 if the reporting obligation was tied solely to the labor organization's contributions to the trust during the reporting period. For this reason, the Department's proposal, in a departure from earlier rulemakings, does not tie a labor organization's reporting obligation to the level of the contributions made to a trust during the reporting period.

The elimination of this condition from the Department's proposal may require a labor organization to report on some trusts that contain only insubstantial amounts of money. However, a labor organization will be required to report very little for a trust with insubstantial receipts and therefore will only be subject to a slight burden. This slight drawback is countered by the transparency gained by members in those situations where the value of the trust is substantial. The Department, however, invites comments on whether the alternatives considered or others should be established to eliminate a reporting obligation where a trust, in effect, is so small or insignificant that the burden of preparing a Form T–1 plainly outweighs any benefit that transparency would provide to the union's members. In this connection, it would be helpful to receive comments about whether it would be appropriate to establish a threshold based on the amount of assets held by a trust and, if so, the amount that would be appropriate for this purpose and any problems that would be posed by such an approach.

4. Itemization of Receipts and Disbursements

The Department proposes that itemization should be required for ''major disbursements'' and ''major receipts'' of the section 3(l) trust. The Department defines ''major disbursements'' and ''major receipts'' for Form T–1 purposes as $10,000 or more. Thus, under the proposal a labor organization would report payments of $10,000 or more from any individual or entity to the trust and payments of $10,000 or more to any individual or entity from the trust. In completing the Form T–1, the labor organization would specify the amount of the receipt or disbursement, its purpose, and other information pertinent to the transaction, including the name and address of the entity or individual involved. Itemization is an essential component of Form LM–2 and also is integral to Form T–1 as a means to prevent circumvention or evasion of the reporting obligations imposed on labor organizations and labor organization officials. Itemization not only provides members with information pertinent to the trusts, but allows them to better monitor the other reporting obligations of their labor organization and its officials under the LMRDA and to detect and thereby help prevent circumvention or evasion of the LMRDA's reporting requirements. Among other requirements under this proposal, Form T–1 requires a labor organization to identify:

- The names of all the trust's officers and all employees making more than $10,000 in salary and allowances and all direct and indirect disbursements to them;
- Disbursements to any individual or entity that aggregate to $10,000 or more during a reporting period and provide for each individual or entity their name, business address, type of business or job classification, and the purpose and date of each individual disbursement of $10,000 or more; and
- Any loans made at favorable terms by the trust to the labor organization's officers or employees, the amount of the loan, and the terms of repayment.

Where certain payments from a business that buys, sells or otherwise deals with a trust in which a labor organization is interested are made to a labor organization officer or employee or his or her spouse, or minor child, the LMRDA imposes on the labor organization officer or employee a separate obligation to report such payments (Form LM–30, as required by 29 U.S.C. 432). Thus, the Form T–1 operates to deter a labor organization official from evading this reporting obligation.

The proposed $10,000 figure is an outgrowth of the earlier rulemaking efforts and is shaped by the concerns there expressed and the Department's accommodation to those concerns. This amount is a higher amount than the itemization threshold provided for the Form LM–2 ($5,000). As the Department has stated in the past, ''The Department will continue to monitor this threshold, as well as all other thresholds established by this rule, and may make future adjustments if economic conditions warrant such a change.'' 68 FR 58374, 58421. In proposing the $10,000 threshold, the Department considered but rejected alternative approaches to triggering itemization. A threshold tied to a particular percentage of a trust's assets or other benchmark could deny members information about substantial transactions where a trust holds substantial assets. Furthermore, a percentage-based threshold that is subject to annual fluctuation lacks predictability and would complicate a year-to-year comparison of reports. If a percentage test was used, information

concerning large trusts would be disclosed in much higher dollar amounts and information from smaller trusts would be reported in smaller amounts. For example, if you have two trusts, one with $100,000 in disbursements and the other with $10,000,000 and the itemization threshold was 1 percent then the first trust would report any disbursements that aggregate to $1,000 or more while the second trust would only report disbursements that aggregate to $100,000 or more. To ensure a uniform level of disclosure regardless of the size of the trust, the Department is proposing a flat dollar threshold of $10,000 for itemization purposes. The Department seeks comments on the appropriateness of using a dollar value threshold in general, and a $10,000 threshold in particular.

The Department's proposal requires that a labor organization aggregates the trust's receipts from, or disbursements to, a particular entity or individual during the reporting period. Aggregation provides a more accurate picture of a labor organization's disbursements because it focuses on the total amount of money the labor organization pays a particular entity or individual, rather than only on ''major'' individual receipts or disbursements. It is the Department's opinion that insofar as such payments are of interest to a labor organization member, there is no difference between a single $10,000 (or more) receipt or disbursement from one source and several receipts or disbursements from one source totaling $10,000 or more. Furthermore, aggregation reduces the incentive to break up a ''major'' disbursement to a single entity or individual in order to avoid itemizing the payment and thereby circumvent the Form T–1 reporting requirements.

The Department recognizes that tracking multiple payments from a specific source throughout the fiscal year imposes some additional burden on a reporting labor organization and a section 3(l) trust. Modern developments in electronic recordkeeping, however, minimize these demands. Electronic recordkeeping is now relatively simple and used routinely even by very small organizations and by individuals. Moreover, given the nature of their day-to-day operations, section 3(l) trusts are likely to already possess the technology and expertise to provide relevant information without undue burden. The recent Form LM–2 filing experience demonstrates the ability of labor organizations, often without the same level of recordkeeping sophistication possessed by most trusts, to satisfy the requirements posed by the Form LM–2, requirements generally more demanding than those posed by the Form T–1.

Comments on the 2002 proposal suggested that itemization could ''bury'' members in unnecessary detail, forcing them to plow through hundreds of pages to review a labor organization's finances. The Department's proposal is based on its belief that this concern is overstated. Labor organization members will be able to utilize the advantages of computer technology to review Form T–1s (and other documents required to be filed under the LMRDA). Electronic filing permits the reviewer to focus his or her review using a search engine to guide the inquiry, allowing review of a potentially large number of itemization reports with relative ease compared to review of the same documents in hard copy. However, the Department seeks comments from the public on this issue.

The Department specifically invites comments on whether reported loans should be limited to those which were made to union officers and employees at a favorable term. The Department seeks comments on whether to expand trust reporting requirements to include all loans to officer and employee regardless of the terms.

5. Protection of Sensitive Information

This proposal protects the disclosure of personal information about members of labor organizations and the disclosure of sensitive information about a labor organization's negotiating or bargaining strategies. In the earlier rulemaking, several labor organizations raised privacy concerns about the itemization requirements of the proposed Form T–1; specifically, they expressed the concern that the disclosure of the name and address of individuals receiving trust funds (as well as the date, purpose, and amount of the transfer)might be unlawful under federal privacy laws or might pose risk to the individuals' health or safety. The Department took those concerns into account in fashioning the Form LM–2 and the approach there taken is embodied in this proposal. These confidentiality provisions, as described herein and in greater detail in the accompanying instructions, are also contained in the regulatory provision applicable to Form LM–2, section 403.8(b)(1). The only difference between the provisions relating to the Form LM–2 and this proposal for the Form T–1 is that each addresses the distinct itemization thresholds for the two reports ($5,000 for Form LM–2 and $10,000 for Form T–1).

The Department also proposes to provide labor organizations the same reporting option available under the Form LM–2 for reporting certain major transactions in situations where a labor organization, acting in good faith and on reasonable grounds, believes that reporting the details of the transaction would divulge information relating to the labor organization's prospective organizing strategy, the identification of individuals working as ''salts,'' or its prospective negotiation strategy. Reporting labor organizations may withhold such information provided they do so in the manner prescribed by the instructions. Thus this information may be reported without itemization; however, as discussed below, this information must be available for inspection by labor organization members with ''just cause.''

Under the proposal, a labor organization that elects to file only aggregated information about a particular receipt or disbursement, whether to protect an individual's privacy or to avoid the disclosure of sensitive negotiating or organizing activities, must so indicate on the Form T–1. A labor organization member has the statutory right ''to examine any books, records, and accounts necessary to verify'' the labor organization's financial report if the member can establish ''just cause'' for access to the information. 29 U.S.C. 431(c); 29 CFR 403.8. Information reported only in aggregated form remains subject to a labor organization's member's just cause right. Such aggregation will constitute a *per se* demonstration of ''just cause,'' and thus the information must be available to a member for inspection. By invoking the option to withhold such information, the labor organization is required to undertake reasonable, good faith actions to obtain the requested information from the trust and facilitate its review by the requesting member. Payments that are aggregated because of risk to an individual's health or safety or where federal or state laws forbid the disclosure of the information are not subject to the *per se* disclosure rule.

The Department specifically invites comments on this approach, including whether transactions involving a section 3(l) trust would pose a genuine risk to a labor organization's organizing or negotiating strategy. The Department seeks comments on whether to narrow, clarify, or remove the confidentiality exception from the Form T–1 instructions. For example, comments are requested on whether all transactions greater than $10,000 should be identified by amount and date on the report, permitting, however, labor organizations, where acting in good faith and on reasonable grounds, to

withhold information that otherwise would be reported, in order to prevent the divulging of information relating to the labor organization's prospective organizing or negotiation strategy.

6. Exemptions and Alternative Means of Compliance

The Department proposes to except from the labor organization's Form T–1 reporting requirement a trust that is established as a PAC or an organization exempt under Internal Revenue Code section 527 (section 527 political organization) if the trust files timely, complete and publicly available reports with federal or state agencies, as required by federal or state law. The Department also proposes a partial exception where an independent audit of the trust has been conducted in accordance with proposed standards discussed below and the audit is filed with OLMS along with page 1 of Form T–1. The purpose of limiting the filing requirements in this way is to minimize any overlapping reporting obligations that exist under certain other laws where such reports are publicly available and provide information roughly comparable to that required by the Form T–1. Additionally, an audit that satisfies the proposed standards and that is submitted along with page 1 of the Form T–1 similarly would be an acceptable substitute. Each of these alternative methods for meeting the labor organization's Form T–1 obligation provides significant, timely financial information about the trust that is updated on a regular basis (for PAC and section 527 reports, typically more frequently than the Form T–1) and requires the itemization of receipts and expenditures.[7] These reports provide a level of transparency similar to the proposed Form T–1.

The Department proposes that the audit must meet the requirements (modeled on section 103 of ERISA, 29 U.S.C. 1023, and 29 CFR 2520.103–1 (relating to annual reports and financial statements required to be filed under ERISA)) described in the Form T–1 instructions. The Department recognizes that the audit option may not provide the same detail as required by the Form T–1, but it believes that this approach is an acceptable trade-off for reducing the overall reporting burden on the labor organization and the section 3(l) trust. The Department invites comments on this proposed alternative. Under the audit alternative, a labor organization need only complete the first page of the Form T–1 (Items 1–15 and the signatures of the organizations' officers) and submit a copy of an audit of the trust that meets all the following standards:

- The audit is performed by an independent qualified public accountant, who after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with Generally Accepted Accounting Principles or Other Comprehensive Basis of Accounting.
- The audit includes notes to the financial statements that disclose, for the preceding twelve-month period:
- Losses, shortages, or other discrepancies in the trust's finances;
- The acquisition or disposition of assets, other than by purchase or sale;
- Liabilities and loans liquidated, reduced, or written off without the disbursement of cash;
- Loans made to labor organization officers or employees that were granted at more favorable terms than were available to others; and
- Loans made to officers and employees that were liquidated, reduced, or written off.
- The audit is accompanied by schedules that disclose, for the preceding twelve-month period:
- A statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; and
- A statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in $10,000 or more of commerce and the total of the transactions with each party.

Under the earlier proposal and rules, a labor organization was not required to file a Form T–1 for a section 3(l) trust if the trust was part of an employee benefit plan required under ERISA to file a Form 5500. Although the Department acknowledged that this option would not provide labor organization members and the public with all the information required by the Form T–1, it appeared that the disclosure purposes of the LMRDA could be satisfied under this approach. After further consideration, the Department has determined that the use of the Form 5500 as a substitute for the Form T–1 would not meet these purposes, and thus this proposal does not include the filing of the Form 5500 covering the section 3(1) trust as an exemption to the Form T–1 filing requirement.

The Form 5500 Annual Return/Report is a system of forms and schedules filed by employee benefit plans subject to ERISA. A common misconception is that Form 5500 reports are filed for all section 3(l) trusts. They are not. Since there is no uniform filing obligation under ERISA for section 3(1) trusts, labor organization members, the public, and OLMS investigators would have to expend considerable time and resources to determine whether a section 3(l) trust has filed the Form 5500 and, if so, whether it filed all the information and schedules required of it under ERISA.

Although a section 3(1) trust may form part of an ''employee pension benefit plan'' or ''employee welfare benefit plan'' subject to ERISA, the ERISA statute does not apply to all section 3(1) trusts. Strike funds, recreational plans, and hiring hall arrangements are examples of funds in which labor organizations participate that fall outside ERISA coverage. *See* 29 CFR 2510.3–1. Further, under the Department's ERISA regulations, some section 3(l) trusts that are part of employee benefit plans subject to ERISA are not required to file the Form 5500 or are allowed to file abbreviated financial schedules. *See* 29 CFR 2520.104–20 (simplified reporting for plans with fewer than 100 participants) and 29 CFR 2520.104–22 (conditional exemption for apprenticeship and training plans). For general information on ERISA's Form 5500 annual reporting requirements, *see* U.S. Department of Labor, *Reporting and Disclosure Guide for Employee Benefit Plans,* (reprinted 2004) available at *http://www.dol.gov/ebsa/pdf/rdguide.pdf* (last visited Nov, 8. 2007).

Moreover, the focus of the financial reporting required on the Form T–1 and the Form 5500 are not identical. As noted above, the Form T–1 implements section 201 of the LMRDA, which requires covered labor organizations to file annual, public reports with the Department, detailing the labor organization's cash flow during the reporting period, and identifying its assets and liabilities, receipts, salaries and other direct or indirect disbursements to each officer and all employees receiving $10,000 or more in aggregate from the labor organization;

[7] Significantly, these forms set the itemization threshold below the $10,000 amount proposed for the Form T–1. They require aggregation of receipts and disbursements; itemization is required for any receipts from or disbursements to an individual or entity that total $200 or more during prescribed reporting cycles. See Federal Election Commission, Instructions for FEC Form 3X and Related Schedules, available at *http://www.fec.gov/pdf/forms/fecfrm3xi_06.pdf* (last visited Nov. 8, 2007); IRS, Instructions for Form 8872, available at *http://www.irs.gov/pub/irs-pdf/i8872.pdf* (last visited Nov. 8, 2007).

direct or indirect loans (in excess of $250 aggregate) to any officer, employee, or member; loans (of any amount) to any business enterprise; and other disbursements. Although there may be some overlap with the Form T–1 in cases where a section 3(1) trust is part of an employee benefit plan required to file a Form 5500 with detailed financial schedules a Form 5500 filing would not include the itemization of disbursements or receipts required by the Form T–1.

Further, the Form T–1 must be filed within 90 days of the end of the labor organization's fiscal year and must cover the section 3(1) *trust's most recent fiscal year, i.e.*, the fiscal year ending on or before the closing date of the labor organization's own fiscal year. This requirement is mandated by the LMRDA's requirement that a labor organization file its financial reports within 90 days of the close of the labor organization's fiscal year. 29 U.S.C. 437(b). The Form 5500 is not due, by comparison, until the end of the seventh month following the end of the plan's fiscal year, with an available extension of up to an additional two and one half months. In the case of a labor organization and a section 3(1) trust that have the same fiscal year, the Form T–1 would be due well in advance of the Form 5500 due date. On the other hand, if a trust's fiscal year ends three months after the labor organization's fiscal year, the Form T–1 will not be due until twelve months after the end of the trust's fiscal year. It should be noted, however, that the trust's fiscal year is established by the trust and will be the same for both Form T–1 and Form 5500 reporting purposes.

The persons required to sign the Form T–1 and Form 5500 also are not identical. Under the proposed Form T–1, the form must be signed by the president and treasurer, or corresponding principal officers, of the labor organization. By comparison, the Form 5500 filed for an employee benefit plan that includes a section 3(1) trust is signed by the plan's ''administrator,'' as defined in section 3(16) of ERISA.[8] For these reasons, the Form 5500 does not appear to be an adequate substitute for the Form T–1.

The Department invites comments on

- Whether any labor organizations now require section 3(l) trusts to provide reports to the labor organization, on a regular basis, at least annually and in comparable or greater detail to the Form T–1, including an itemization of receipts and disbursements, and, if so
  - Whether the itemization threshold is higher or lower than $10,000; and
  - Whether the report is mailed to each member or made publicly available to members by other means;
- Whether documents provided for internal use by the trustees of a section 3(l) trust, if publicly disclosed, would adequately meet the disclosure requirements of the LMRDA;
- Whether the proposed rule enables labor organizations and section 3(l) trusts sufficient time to compile and report on information needed to complete the Form T–1 in those instances where the labor organization and the trust have the same fiscal year, *i.e.*, where the Form T–1 must be filed within 90 days of the close of the trust's fiscal year; and
- If the proposed rule will impose substantial difficulties for labor organizations and trusts in the instances discussed in the preceding bullet point, and, if so, how these difficulties may be ameliorated in a way that ensures the timely receipt of information about such trusts by members of labor organizations and the public.

Labor organizations or other members of the public are encouraged to submit representative copies of any such reports or other documents of the type described.

7. Each Labor Organization With Annual Receipts of at Least $250,000 Participating in a Section 3(L) Trust With Other Labor Organizations Must File a Form T–1

The proposal does not differentiate among the reporting obligations of labor organizations contributing to the same trust. Any labor organization that satisfies the reporting threshold will have to submit the Form T–1, even though the labor organization's share may only represent a relatively small portion of the total contributions made to the trust by labor organizations.

In response to the Department's 2002 proposal, an international labor organization explained that it was not uncommon for several locals to participate in an apprenticeship and training fund that would be funded by payments from employers pursuant to negotiated agreements providing for ''a cents per hour'' contribution for hours worked by each of their employees. As an example, the labor organization discussed a fund with annual contributions over $300,000 in which seven locals participated. The contributions from, or on behalf of, each local ranged from about $10,000 to about $100,000. The fund had four management and four labor trustees; three from different locals contributing to the trust and a fourth from the labor organizations' parent organization. The labor organization also explained that it is common for local labor organizations in different crafts (affiliated with different parent bodies) to participate in a fund. It explained that in these instances, it would be unusual for a single craft or local to represent a majority of the labor organization trustees. It stated that in such circumstances it is unrealistic to suggest that any single labor organization or craft controls the trust.

As suggested by the Department's proposal and the apprenticeship and training fund just discussed, it is not uncommon for multiple labor organizations to participate in a section 3(l) trust without any single labor organization contributing a majority of the trust's revenues. In some trusts, such as strike funds, labor organizations may be the sole contributors to the fund; in others, such as Taft-Hartley trusts, the trust will be funded by employers, but such funds are established through collective bargaining agreements and the employer contributions are made for the benefit of the members of the participating labor organizations or their beneficiaries.

Trusts in which several labor organizations participate typically will consist solely of funds that are contributed on behalf of their members. In many instances, none of the participating labor organizations contributes a majority of the trust's revenues. Thus, unless a reporting obligation is imposed on one or more of the labor organizations on some basis other than majority contributions, no labor organization members will receive any information on the trust's finances. In its 2002 proposal, the Department illustrated the need for reporting on section 3(l) trusts with four examples in which labor organizations had evaded their reporting obligations through their involvement with such trusts. (These same examples are discussed in this proposal.) One of these examples involved the improper diversion of funds from a strike fund in which no single labor organization held a controlling interest. The absence of any labor organization reporting obligations facilitated the improper disposition of thousands of dollars (over $60,000 per month) from the strike fund. As

[8] Section 3(16)(A) of ERISA, 29 U.S.C. 1002 (3)(16)(A), defines the term ''administrator'' to mean: ''(i) the person specifically so designated by the terms of the instrument under which the plan is operated; (ii) if an administrator is not so designated, the plan sponsor; or (iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.''

discussed above, a single labor organization may circumvent its Form LM–2 reporting obligations when it retains a controlling management role or financially dominates a trust; there is no basis to conclude that a group of labor organizations is not equally capable of doing so. Disbursements from a trust of pooled labor organization money reflect the contributing labor organizations' financial conditions and operations as clearly as the disbursements from a trust funded by a single labor organization. A rule directed to preventing a single labor organization from circumventing or evading the law should not permit the same conduct when it is undertaken by more than one labor organization.

Under the proposal, multiple labor organizations may be required to report on a single trust. In fashioning this proposal, the Department considered two alternatives: fixing the obligation on the labor organization with the greatest stake in the trust; or allowing one of the participating labor organizations to voluntarily take on this responsibility. While these alternatives may provide an appropriate basis for fairly and roughly allocating the reporting burden, each suffers from the same basic infirmity—labor organization members are not likely to view reports filed by other labor organizations when searching for information on the financial activities of their own labor organization and its trusts. Members of other labor organizations participating in the trust would have more difficulty obtaining information no less vital to their interests than the information provided to members of the reporting labor organization. Furthermore, this reporting gap could allow some labor organizations and individuals to evade their reporting obligations under the LMRDA.

Improper payments would be much easier to conceal if the Form T–1 were filed only by some of the participating labor organizations (some vendors or contributors to the section 3(l) trust may only be known by members of a particular labor organization). For these reasons, the Department has determined that where multiple labor organizations appoint a majority of the members of the trust's governing board, or their contributions constitute greater than 50 percent of the trust's annual revenues, each will be required to file a Form T–1. In making this determination, the Department recognizes that the section 3(l) trust, not the reporting labor organizations, will compile most of the necessary information and that this information, in large part, will be identical for each participating labor organization. This will operate to allocate the reporting costs among the labor organizations, as determined by the trust, and will keep their total costs only marginally higher than if a Form T–1 was required to be filed by only one of the participating labor organizations.

In earlier rulemaking efforts, several commenters expressed concern that a section 3(l) trust could refuse to provide the information needed to complete the Form T–1. Several commenters expressed concern about a labor organization's liability for failure to file a timely report, given that the trust might refuse to provide the information and the labor organization may be unable to compel production. The Department acknowledges that this may remain a possibility under this proposal. However, given that the reporting obligation under the proposal only arises where a labor organization, alone or in combination with other labor organizations, maintains management control or financial domination over a trust, the possibility of such intransigence appears remote. The Department's view is supported by the public comments received about the 2002 proposal. No comment suggested that any administrator of a section 3(l) trust had expressed an intention to withhold from a labor organization information required to complete the Form T–1. Further, although there were some statements that a trust would be bound by its own fiduciary obligations in determining whether to make the information available, there was no suggestion that any trust held the view that it would violate such duty by providing the information required by the form. Thus, the Department expects that trusts will routinely and voluntarily comply in providing such information to reporting labor organizations. Nevertheless, in those rare instances where a trust balks at providing the necessary information, the labor organization may request that the Department use its available investigatory authority to assist the reporting labor organization to obtain information necessary to complete the Form T–1. The Department expects that labor organizations and labor organization officials will take timely, reasonable, and good faith actions to obtain the necessary information from section 3(l) trusts and, where they have done so, the Department will not assert a willful and knowing violation of the filing requirement against the labor organization, its president, or secretary-treasurer.

8. Requirement of Electronic Filing

For several years, and with Congressional urging and financial assistance, the Department has pursued the development and implementation of electronic filing of annual reports required by the LMRDA, along with an indexed and easily searchable computer database of the information submitted, accessible by the public over the Internet. *See H.R. Conf. Rep. 105–390,* 1997 U.S.C.C.A.N. 2061; *H.R. Conf. Rep. 105–825; H.R. Conf. Rep. 106–419; H.R. Conf. Rep. 106–479; H.R. Conf. Rep. 106–1033; H.R. Conf. Rep. 107–342,* 2002 U.S.C.C.A.N. 1690; *H.R. Conf. Rep. 108–10,* 2003 U.S.C.C.A.N. 4.

The Department has had in place systems for electronic submission and disclosure since 2001 (the systems were later augmented for submissions under the 2003 final rule). There have been no significant problems with the system. Where minor problems have arisen, the Department has taken steps to successfully resolve the problems. Moreover, the existing system was originally designed for the submission of both Form LM–2 and Form T–1.

This proposal will utilize this existing system for electronic submissions, minimizing any difficulty by labor organizations in submitting the reports electronically. This system will allow the Department to make the reports available for electronic disclosure, and enable labor organization members and others to search and otherwise utilize data in the Department's Form T–1 database. Despite the familiarity of users with the existing system, the Department recognizes that some labor organizations nonetheless may encounter some temporary problems in electronically submitting the Form T–1. Thus, under the proposal, a labor organization that must file a Form T–1 may assert a temporary hardship exemption or apply for a continuing hardship exemption to prepare and submit the report in paper format. If a labor organization files both Form LM–2 and Form T–1, the exemption must be separately asserted for each report, although in appropriate circumstances the same reasons may be used to support both exemptions. As proposed, if it is possible to file Form LM–2, or one or more Form T–1s, electronically, no exemption should be claimed for those reports, even though an exemption is warranted for a related report. The key aspects of the proposed hardship exemption follow:

Temporary Hardship Exemption:

• If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic Form T–1, it may be filed in paper format by the required due date. An electronic format copy of the filed paper format document

shall be submitted to the Department within 10 business days after the required due date. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards.

• The applicant must comply with special instructions for submitting the Form T–1 in paper format.

• If neither the paper filing nor the electronic filing is received in the timeframe specified, the report will be considered delinquent.

Continuing Hardship Exemption:

• A labor organization may apply in writing for a continuing hardship exemption if Form T–1 cannot be filed electronically without undue burden or expense. Such written application shall be received at least thirty days prior to the required due date of the report(s). The written application shall include, but not be limited to, the following: (1) The justification for the requested time period of the exemption; (2) the estimated burden and expense that the labor organization would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

• The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the labor organization shall file the report(s) in electronic format by the required due date.

• If the request is granted, the labor organization shall submit the report(s) in paper format by the date prescribed by OLMS. The applicant must comply with special instructions for submitting the Form T–1 in paper format.

• The filer may be required to submit Form T–1 in electronic format upon the expiration of the period for which the exemption is granted.

• If neither the paper filing nor the electronic filing is received in the timeframe specified, the report will be considered delinquent.

9. Effective Date

The Department proposes to provide labor organizations significant lead time to prepare for submitting the initial Form T–1. Under the proposal, the final rule will take effect no less than 30 days after its publication in the **Federal Register**. Furthermore, at the earliest, no report will be due until 15 months after the rule's effective date. Thus, labor organizations whose fiscal years begin after the rule's effective date will have more than 15 months before their initial Form T–1 is due. As stated in the proposal:

> Form T–1 must be filed within 90 days of the end of the labor organization's fiscal year. The Form T–1 shall cover the trust's most recent fiscal year, *i.e.*, the fiscal year ending on or before the closing date of the labor organization's own fiscal year.

Under the proposal, labor organizations will file a Form T–1 and Form LM–2 together. The filing will be due 90 days after the labor organization's fiscal year ends. The Form T–1 will be based on the latest available information for the trust's most recent fiscal year reported to the labor organization by the trust or from a qualifying audit. The Department's intention in permitting a labor organization to file Form T–1 within ninety days after the labor organization's fiscal year ending date, rather than requiring it to be filed within ninety days after the trust's fiscal year ending date, is to ease the burden for both the trust and the labor organization. The Department anticipates that a trust will be able to more readily provide necessary information to the reporting labor organization at the conclusion of the trust's fiscal year and that a labor organization will have correspondingly less difficulty in obtaining information at that time. The Department intends to include in the instructions that are published as part of the final rule examples of the rule's application to trusts and labor organizations that have the same or different fiscal years.

IV. Regulatory Procedures

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this proposed rule is not an ''economically significant'' regulatory action under section 3(f)(1) of Executive Order 12866. Based on a preliminary analysis of the data, the rule is not likely to: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues. As a result, the Department has concluded that a full economic impact and cost/benefit analysis is not required for the rule under Section 6(a)(3) of the Order. However, because of its importance to the public, the rule was treated as a significant regulatory action and was reviewed by the Office of Management and Budget.

Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, this proposed rule does not include a federal mandate that might result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year.

Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and has determined that the proposed rule does not have federalism implications. Because the economic effects under the rule will not be substantial for the reasons noted above and because the rule has no direct effect on states or their relationship to the federal government, the rule 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.''

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (''RFA''), 5 U.S.C. 601 *et seq.*, requires agencies to prepare an initial regulatory flexibility analyses in drafting regulations that will have a significant economic impact on a substantial number of small entities.

In the 2003 and 2006 Form T–1 rules, the Department undertook regulatory flexibility analyses, utilizing the Small Business Administration's (''SBA'') ''small business'' standard for ''Labor Unions and Similar Labor Organizations.''. Specifically, the Department used the $5 million standard established in 2000 (as updated in 2005 to $6.5 million) for purposes of its regulatory flexibility analyses. *See* 65 FR 30836 (May 15, 2000); 70 FR 72577 (Dec. 6, 2005). This same standard has been used for the Department's initial regulatory flexibility analysis in this proposed rule.

The Department recognizes that the SBA has not established fixed, financial thresholds for ''organizations,'' as distinct from other entities. *See A Guide for Federal Agencies: How to Comply with the Regulatory Flexibility Act,*

Office of Advocacy, U.S. Small Business Administration at 12–13, available at *http://www.sba.gov.* The Department further recognizes that under SBA guidelines, the relationship of an entity to a larger entity with greater receipts is a factor to be considered in determining the necessity of conducting a regulatory flexibility analysis. In this regard, the affiliation between a local labor organization and a national or international labor organization, a widespread practice among labor organizations subject to the LMRDA, presents a unique circumstance in determining whether and, if so, how, receipts of labor organizations should be aggregated, if at all, in assessing whether a regulatory flexibility analysis is required and how it should be conducted. It is the Department's view, however, that it would be inappropriate, given the past rulemaking concerning the Form T–1 and the Form LM–2, to depart from the $6.5 million receipts standard in preparing this initial regulatory flexibility analysis. Comments are invited to address this question of whether the use of the $6.5 million figure, without aggregation among affiliated labor organizations, is appropriate and if not, to suggest alternative approaches for this purpose. Accordingly, the following analysis assesses the impact of these regulations on small entities as defined by the applicable SBA size standards.

All numbers used in this analysis are based on 2005 data taken from the Office of Labor-Management Standards e.LORS data base, which contains records of all labor organizations that have filed LMRDA reports with the Department.

1. Statement of the Need for, and Objectives of, the Proposed Rule

The following is a summary of the need for and objectives of the proposed rule. A more complete discussion is found in the preamble.

The objective of this proposed rule is to increase the transparency of labor organization financial reporting by creating a new form for labor organization trust reporting (Form T–1) to enable workers to be responsible, informed, and effective participants in the governance of their labor organizations; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the Act by the Department. The Form T–1 is designed to close a reporting gap where labor organization finances in relation to LMRDA section 3(l) trusts were not disclosed to members, the public, or the Department.

One of the LMRDA's primary reporting obligations (Forms LM–2, LM–3, and LM–4) applies to labor organizations, as institutions; other important reporting obligations apply to officers and employees of labor organizations (Form LM–30), requiring them to report any conflicts between their personal financial interests and the duty they owe to the union they serve, and to employers and labor relations consultants who must report payments to labor organizations and their representatives (Form LM–10). *See* 29 U.S.C. 432, 433. Requiring labor organizations to report the information required by the proposed Form T–1 provides an essential check for labor organization members and the Department to ensure that labor organizations, labor organization officials, and employers are accurately and completely fulfilling their reporting duties under the Act, obligations that can easily be ignored without fear of detection if reports relating to trusts are not required.

Under the Department's former rule (superseded by the revised 2003 Form LM–2), a reporting obligation concerning section 3(l) trusts would arise only if the trust was a ''subsidiary'' of the reporting labor organization and met other requirements previously set by the Department. *See* Form LM–2 instructions in effect prior to the 2003 final rule; *see also* 68 FR 58413. Thus, the former rule, which was crafted shortly after the Act's enactment, required reporting by only a portion of the labor organizations that contributed to section 3(l) trusts. During the intervening decades, the financial activities of individuals and organizations have increased exponentially in scope, complexity, and interdependence. 67 FR 79280–81. For example, many labor organizations manage benefit plans for their members, maintain close business relationships with financial service providers such as insurance companies and investment firms, operate revenue-producing subsidiaries, and participate in foundations and charitable activities. 67 FR 79280. The complexity of labor organization financial practices, including business relationships with outside firms and vendors, increases the likelihood that labor organization officers and employees may have interests in, or receive income from, these businesses. As more labor organizations conduct their financial activities through sophisticated trusts, increased numbers of businesses have commercial relationships with such trusts, creating financial opportunities for labor organization officers and employees who may operate, receive income from, or hold an interest in such businesses. In addition, employers also have fostered multi-faceted business interests, creating further opportunities for financial relationships between labor organizations, labor organization officials, employers, and other entities, including section 3(l) trusts.

Such trusts ''pose the same transparency challenges as 'off-the-books' accounting procedures in the corporate setting: large scale, potentially unattractive financial transactions can be shielded from public disclosure and accountability through artificial structures, classification and organizations.'' 67 FR 79282. The Department's former rule required labor organizations to report on only a subset of such trusts. This approach allowed a gap in the reporting of financial information concerning these trusts. The trust funds, if they had been retained by the labor organization, would have appeared on the labor organization's Form LM–2. Despite the close relationship between the labor organization and the trust and the purpose of the funds to benefit the members of the labor organization, transparency ended once the funds left the labor organization and thereby limited accountability. Thus, Form T–1 would essentially follow labor organization funds that remain in closely connected trusts, but which would otherwise go unreported. As a result of non-disclosure of these funds, members have long been denied important information about labor organization funds that were being directed to other entities, ostensibly for the members' benefit, such as joint funds administered by a labor organization and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions, and redevelopment or investment groups. *See* 67 FR 79285. The Form T–1 is necessary to close this gap, prevent certain trusts from being used to evade the Title II reporting requirements, and provide labor organization members with information about financial transactions involving a significant amount of money relative to the labor organization's overall financial operations and other reportable transactions. 68 FR 58415. The proposed Form T–1 will also identify the trust's significant vendors and service providers. A labor organization member who is aware that a labor organization official has a financial relationship with one or more of these

businesses will be able to determine whether the business and the labor organization official have made required reports. The purpose of the LMRDA disclosure requirements is to prevent financial malfeasance of labor organization money. 67 FR 79282–83. This purpose is demonstrably frustrated when existing reporting obligations fail to disclose, for example, opportunities for fraud. (Examples of situations where money in section 3(l) trusts was being used to circumvent or evade the reporting requirements can be found in the preamble and at 67 FR 79283.)

As explained in the preamble, additional trust reporting is necessary to ensure, as intended by Congress, the full and comprehensive reporting of a labor organization's financial condition and operations, including a full accounting to labor organization members from whose work the payments were earned. 67 FR 79282–83. The proposed rule will prevent circumvention and evasion of these reporting requirements by providing labor organization members with financial information concerning their labor organization's trusts when the labor organization, alone or in combination with other labor organizations, selects the majority of the directors or provides the majority of the funds.

2. Legal Basis for Rule

The legal authority for the notice of proposed rule-making is section 208 of the LMRDA, 29 U.S.C. 438. Section 208 provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under title II of the Act, including rules prescribing reports concerning trusts in which a labor organization is interested, and such other reasonable rules and regulations as she may find necessary to prevent the circumvention or evasion of the reporting requirements. Section 3(l) of the Act, 29 U.S.C. 402(l), defines a ''trust in which a labor organization is interested.''

3. Number of Small Entities Covered Under the Rule

The Department estimates that of the 4,452 labor organizations subject to this proposed rule, 4,228 of these, or 94.97 percent of the total will have receipts less than $6.5 million, the SBA small business size standard for ''Labor Unions and Similar Labor Organizations.'' These labor organizations have annual average receipts of $1.3 million. The Department estimates that only some of these 4,228 labor organizations will have to file Form T–1 reports; the Department estimates that these organizations will file approximately 2,077 reports annually (on average about .49 reports per labor organization).

The affiliation among labor organizations may have an impact on the number of organizations that should be counted as ''small organizations'' under section 601(4) of the RFA, 5 U.S.C. 601(4). Section 601(4) provides in part: ''the term 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' However, for purposes of analysis here and for ready comparison with the RFA analyses in its earlier Form T–1 rulemakings, the Department has used the $6.5 million receipts test for ''small businesses,'' rather than the ''independently owned and operated and not dominant'' test for ''small organizations.'' Application of the latter test likely would reduce the number of labor organizations that would be counted as small entities under the RFA. We are seeking comment on the accuracy of this assumption.[9]

4. Relevant Federal Requirements Duplicating, Overlapping or Conflicting With the Rule

To the extent that there are federal rules that duplicate, overlap, or conflict with this proposed rule, a specific exemption from the requirements of this rule has been provided. It should be noted, however, that some section 3(l) trusts, *i.e.*, those that are part of employee benefit plans subject to ERISA coverage and disclosure requirements, are currently required to report some similar information to the Employee Benefits Security Administration on an annual report Form 5500. However, this information does not include certain information captured by the proposed Form T–1 that is specifically focused on disclosures under section 201 of the LMRDA.

5. Differing Compliance or Reporting Requirements for Small Entities

Under the proposal, the reporting, recordkeeping, and other compliance requirements apply equally to all labor organizations that are required to file a Form T–1 under the LMRDA. Only the largest filers, those that have annual receipts in the millions, are likely to have multiple trusts which will require substantial changes in their accounting practices in order to report these trusts on the new form. Labor organizations with receipts of between $250,000 and $2 million, which account for over 3,441 of the 4,452 Form LM–2 filers, are likely to have fewer trusts for which they will have to file a Form T–1 than the organizations with greater annual receipts.

6. Clarification, Consolidation and Simplification of Compliance and Reporting Requirements for Small Entities

OLMS has updated the e.LORS system to allow labor organizations to file Form T–1 as they file the current Form LM–2. Under the proposed rule, labor organizations are directed to use an electronic reporting format to maintain financial information. This information can then be electronically compiled in the proper format for electronic filing.

OLMS will provide compliance assistance for any questions or difficulties that may arise from using the reporting software. A help desk is staffed during normal business hours and can be reached by telephone.

The use of electronic forms makes it possible to download information from previously filed reports directly into the form; enables officer and employee information to be imported onto the form; makes it easier to enter information; and automatically performs calculations and checks for typographical and mathematical errors and other discrepancies, which reduces the likelihood of having to file an amended report. The error summaries provided by the software, combined with the speed and ease of electronic filing, will also make it easier for both the reporting labor organization and OLMS to identify errors in both current and previously filed reports and to file amended reports to correct them.

7. The Use of Performance Rather Than Design Standards

The Department considered a number of alternatives to the proposed rule that could minimize the impact on small entities. One alternative would be not to create a Form T–1. As stated above, this alternative was rejected because OLMS case files and experience demonstrate that the goals of the Act are not being met insofar as the finances of labor organizations are held in section 3(l) trusts. As explained further in the preamble, labor organization members have no information on their labor

[9] As discussed in greater detail in the PRA analysis, the primary impact of this proposed rule will be on the largest labor organizations, defined as those that have $250,000 or more in annual receipts. Based on information in its electronic labor organization reporting system (''e.LORS''), the Department estimates [10] that there are approximately 4,452 labor organizations of this size that have $250,000 or more in annual receipts (just 18.5 percent of the 24,065 labor organizations covered by the LMRDA).

organization's 3(l) trusts. Labor organization members need this information to make informed decisions on labor organization governance.

Another alternative would be to limit the proposed reporting requirements to national and international parent labor organizations. However, the Department has concluded that such a limitation would eliminate the availability of meaningful information from local and intermediate labor organizations, which may have a far greater impact on and relevance to labor organization members, particularly since such lower levels of labor organizations generally set and collect dues and provide representational and other services for their members. Such a limitation would reduce the utility of the information to a significant number of labor organization members. Of the estimated 4,452 labor organizations subject to Form T–1 filing requirements under the proposal, just 101 are national and international labor organizations. Requiring only national and international organizations to file Form T–1 would not effectively increase labor organization transparency nor provide any deterrent to fraud and embezzlement by local and regional officials.

Another alternative would be to propose a phase-in of the effective date of the Form T–1, which would provide some labor organizations additional time to modify their recordkeeping systems in order to comply with the new reporting requirement. The Department has concluded, however, that the proposed rule allows all Form T–1 filers sufficient time to adapt to the proposed disclosure requirements and make any necessary adjustments to their recordkeeping and reporting systems. OLMS also plans to provide compliance assistance to any labor organization or section 3(l) trust that requests it. The Department believes it has minimized the economic impact of the form on small labor organizations to the extent possible while recognizing workers' and the Department's need for information to protect the rights of labor organization members under the LMRDA.

8. Reporting, Recording and Other Compliance Requirements of the Rule [10]

This analysis only considers unions within Tier I and a portion of the unions within Tier II. There is no analysis of Tier III unions because all unions within Tier III are outside the coverage of the Regulatory Flexibility Act. This proposed rule is not expected to have a significant economic impact on a substantial number of small entities. The LMRDA is primarily a reporting and disclosure statute. Accordingly, the primary economic impact of the proposed rule will be the cost of obtaining and reporting required information.

The Department assumes that each Tier I labor organization (those with between $250,000 and $499,999 in annual receipts) will spend, on average, about .75 hours contacting all the section 3(l) trusts listed on their Form LM–2s to determine whether a Form T–1 is required.[11] The Department estimates that this will cost each Tier I labor organization, on average, $11.92 a year or .003 percent of annual receipts. Each Tier II labor organization that is a ''small entity'' (those with between $500,000 and $6.5 million in annual receipts) will spend approximately 1.5 hours contacting all the section 3(l) trusts listed on their LM–2 to determine whether a Form T–1 is required. This will cost each Tier II labor organization on average $52.79 a year or .003 percent of annual receipts. Of those trusts contacted, only some will meet the Form T–1 filing requirements. For those that meet the filing requirements, the labor organizations will incur the recordkeeping and reporting burden associated with the Form T–1.

The first year cost of the proposed Form T–1 (including first year non-recurring implementation costs) for the estimated 1,347 labor organizations with annual receipts between $250,000 and $499,999 who actually file a T–1 is $1,139.31, or 0.32 percent of average annual receipts (*see* Table 1).[12] The first year cost of the proposed Form T–1 (including first year non-recurring implementation costs) for the estimated 2,881 labor organizations with annual receipts between $500,000 and $6,500,000 who actually file a Form T–1 is $2,523.12, or 0.15 percent of total annual receipts (*see* Table 1). Further, under the Department's analysis, the costs fall during the second and third year as the reporting infrastructure is completed and filers become more familiar with the form. The Department estimates a 52.72 percent reduction in the second year and another 10.32 percent reduction in the third year. Filing costs in the third year for labor organizations with between $250,000 and $499,999 in annual receipts are estimated to be $483.06 or 0.13 percent of their average annual receipts. Filing costs in the third year for labor organizations with between $500,000 and $6,500,000 in annual receipts are estimated to be $1,069.78 or .06 percent of their average annual receipts.

TABLE 1.—SUMMARY OF T–1 REGULATORY FLEXIBILITY ANALYSIS

For labor organizations that meet the SBA small entities standard	Total burden hours per respondent	Total cost per respondent
First Year Cost of Proposed Form T–1 for Labor organizations with $250,000 to $499,999 in Annual Receipts	71.7	$1,139.31
Percent of Average Annual Receipts	n.a.	0.32%
Second Year Cost of Proposed Form T–1 for Labor organizations with $250,000 to $499,999 in Annual Receipts	33.9	$538.67
Percent of Average Annual Receipts	n.a.	0.15%
Percentage Reduction in Cost From Previous Year	n.a.	52.72%
Third Year Cost of Proposed Form T–1 for Labor organizations with $250,000 to $499,999 in Annual Receipts	30.4	$483.06
Percent of Average Annual Receipts	n.a.	0.13%
Percentage Reduction in Cost From Previous Year	n.a.	10.32%

[10] The estimated burden on labor organizations is discussed in detail in the section concerning the Paperwork Reduction Act. The figures discussed in the text are derived from the figures explained in that section.

[11] This assumption is premised on the following: Only some labor organizations will have any section 3(l) trusts; some of those labor organizations will not need additional information to determine a particular trust's coverage under the proposed rule; the number of inquiries will be proportional to the estimated number of trusts for the three tiers of labor organizations based on the amount of their annual receipts; and typically only a telephone call or email will be needed to make the coverage inquiry with the trust. The costs are based on the wage rates for labor organizations. See Table 4. Comments are invited on the methodology and assumptions underlying this assumption and other assumptions and estimates utilized in the Department's burden analysis.

[12] The burden hours and costs are identified in the Paperwork Reduction Act section that follows.

TABLE 1.—SUMMARY OF T–1 REGULATORY FLEXIBILITY ANALYSIS—Continued

For labor organizations that meet the SBA small entities standard	Total burden hours per respondent	Total cost per respondent
First Year Cost of Proposed Form T–1 for Labor organizations with $500,000 to $6,500,000 in Annual Receipts	71.7	$2,523.12
Percent of Average Annual Receipts	n.a.	0.15%
Second Year Cost of Proposed Form T–1 for Labor organizations with $500,000 to $6,500,000 in Annual Receipts	33.9	$1,192.94
Percent of Average Annual Receipts	n.a.	0.07%
Percentage Reduction in Cost From Previous Year	n.a.	52.72%
Third Year Cost of Proposed Form T–1 for Labor organizations with $500,000 to $6,500,000 in Annual Receipts	30.4	$1,069.78
Percent of Average Annual Receipts	n.a.	0.06%
Percentage Reduction in Cost From Previous Year	n.a.	10.32%

As noted in section 3 above, the proposed rule will apply to 4,228 labor organizations that meet the SBA standard for small entities, or just 17.6 percent of the 24,065 labor organizations that must file an annual financial report under the LMRDA. The proposed rule is not expected to have a significant economic impact on these entities. For the estimated 1,347 labor organizations with annual receipts between $250,000 and $499,999 that actually file a Form T–1 under the proposed rule, the first year costs (including first year non-recurring implementation costs) are $1,139.31, or 0.32 percent of average annual receipts (*see* Table 1).[13] For the estimated 2,881 labor organizations with annual receipts between $500,000 and $6,500,000 that actually file a Form T–1 under the proposed rule, the first year costs (including first year non-recurring implementation costs) are $2,523.12, or 0.15 percent of total annual receipts (*see* Table 1). Therefore, the Department has decided that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 (''PRA''). *See* 5 CFR 1320.9. As discussed in the preamble to this proposed rule, the analysis under the Regulatory Flexibility Act, and the analysis that follows, the rule implements an information collection that meets the requirements of the PRA in that: (1) The information collection has practical utility to labor organizations, their members, other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; (3) the provisions reduce to the extent practicable and appropriate the burden on labor organizations that must provide the information, including small labor organizations; (4) the form, instructions, and explanatory information in the preamble are written in plain language that will be understandable by reporting labor organizations; (5) the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of labor organizations that must comply with them; (6) this preamble informs labor organizations of the reasons that the information will be collected, the way in which it will be used, the Department's estimate of the average burden of compliance, which is mandatory, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is ''appropriate to the purpose for which the information is to be collected''; and (9) the changes implemented by this rule make extensive, appropriate use of information technology ''to reduce burden and improve data quality, agency efficiency and responsiveness to the public.'' *See* 5 CFR 1320.9; 44 U.S.C. 3506(c).

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, the reporting burden (time and financial resources) is minimized, and the Department can properly assess the impact of collection requirements on respondents.

In this proposed rulemaking, the Department has sought to improve the usefulness and accessibility of information to members of labor organizations subject to the LMRDA. The LMRDA reporting provisions were devised to protect the basic rights of members of labor organizations and to guarantee the democratic procedures and financial integrity of labor organizations. The 1959 Senate report on the version of the bill later enacted as the LMRDA stated clearly that ''the members who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property.'' A full accounting was described as ''full reporting and public disclosure of union internal processes and financial operations.''

As labor organizations have become more multifaceted and have created hybrid structures for their various activities, the form used to report financial information with respect to these activities had until recently remained relatively unchanged and had become a barrier to the complete and transparent reporting of labor organizations' financial information intended by the LMRDA. Moreover, just as in the corporate sector, there have been a number of financial failures and irregularities involving pension funds and other member accounts maintained by labor organizations. These failures and irregularities result in direct financial harm to members of labor

[13] The burden hours and costs are identified in the Paperwork Reduction Act section that follows.

organizations. If members had more complete, understandable information about their labor organizations' financial transactions, investments, and solvency, they would be in a much better position than they are today to protect their personal financial interests and to exercise their rights of self-governance. The purpose of the proposed rule is to provide them with such information. The information collection achieved by this proposed rule is integral to this purpose. The paperwork requirements associated with the rule are necessary to enable workers to be responsible, informed, and effective participants in the governance of their labor organizations; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the LMRDA by the Department.

As discussed in the preamble, members have long been denied important information about labor organization funds that were being directed to other entities, ostensibly for the members' benefit, such as joint funds administered by a labor organization and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions, and redevelopment or investment groups. The proposed Form T–1 is necessary to close this gap, prevent labor organizations from using certain trusts to evade the Title II reporting requirements, and provide labor organization members with information about financial transactions involving a significant amount of money relative to the labor organization's overall financial operations and other reportable transactions. Trust reporting is necessary to ensure, as intended by Congress, the full and comprehensive reporting of a labor organization's financial condition and operations, including a full accounting to labor organization members for payments to the trust, payments made because of the work of these members. Trust reporting is also necessary to prevent circumvention and evasion of the reporting requirements imposed on officers and employees of labor organizations and on employers.

The proposed Form T–1 is designed to take advantage of technology that reduces the burden of providing detailed information, while at the same time making it easier to file and publish the contents of the reports. Members of labor organizations thus will be able to obtain a more accurate and complete picture of their organization's financial condition and operations without imposing an unwarranted burden on respondents. Supporting documentation need not be submitted with the forms, but labor organizations are required, pursuant to the LMRDA, to maintain, assemble, and produce such documentation in the event of an inquiry from a member of a labor organization or an audit by an OLMS investigator.

Based upon the analysis presented below, the Department estimates that the total first year burden to comply with the proposed Form T–1 will be 183,361 hours. The total first year compliance costs associated with this burden is estimated to be $6,172,047. Therefore, this proposed rule will not be a major economic rule. Both the burden hours and the compliance costs associated with Form T–1 decline in subsequent years. The Department estimates that the total burden averaged over the first three years to comply with the Form T–1 to be 117,995 hours per year. The total compliance costs associated with this burden averaged over the first three years are estimated to be $2.6 million per year.

A. Overview of Form T–1

The Form T–1 in this proposed rule is identical to the form promulgated at 71 FR 57116, but as discussed in the preamble the scope of the reporting requirement has been narrowed in order to conform the rule with the D.C. Circuit's decision in *AFL-CIO* v. *Chao*, 409 F.3d 377 (2005). The proposed rule reiterates the Department's determination that no Form T–1 will be required if the trust files a report pursuant to 26 U.S.C. 527, or if the organization files publicly available reports with a Federal or state agency as a PAC. Additionally, a labor organization may substitute an audit that meets the criteria set forth in the Form T–1 instructions for the financial information otherwise reported on a Form T–1.

Form T–1 consists of 14 questions that identify the labor organization and trust; six yes/no questions covering issues such as whether any loss or shortage of funds was discovered during the reporting year and whether the trust had made any loans to officers or employees of the labor organizations at terms below market rates; four summary numbers for total assets, liabilities, receipts, and disbursements; a schedule for itemizing all receipts of $10,000 or more, individually or in the aggregate, from any entity or individual; a schedule for itemizing all disbursements of $10,000 or more, individually or in the aggregate, to any entity or individual; and a schedule for listing all officers of the trust and payments to them and all employees of the trust who received more than $10,000 from the trust.

Form T–1 and its instructions, which are modified to reflect the proposed filing criteria, are published as an appendix to this proposed rule.

B. Methodology for the Burden Estimates

The figures used here by the Department are derived from the Department's computations based on assumptions, rounded to the nearest hundredth, published in the 2003 rule, 68 FR 58433, and the 2006 rule, 71 FR 57116. For this proposed rule, baselines and other estimates (such as whether a labor organization, trust, or outside personnel will complete the form) for the Form T–1 are assumed to parallel those of the current Form LM–2. Filers of Form T–1 will be a subset of the Form LM–2 filers, *i.e.*, those Form LM–2 filers that participate in a section 3(l) trust will be required to file the Form T–1 when other criteria, as explained above, are met. In reaching its estimates, the Department considered both the one-time and recurring costs associated with the proposed rule. Separate estimates are included for the initial year of implementation as well as the second and third years. For filers, the Department included separate estimates, based on the relative size of labor organizations as measured by the amount of their annual receipts.

This NPRM will affect the largest labor organizations, defined as those that have $250,000 or more in annual receipts, subject to the Act. Such labor organizations that are interested in a section 3(l) trust must file a Form T–1 when: The labor organization, alone or in combination with other labor organizations, (A) appoints a majority of the members of the trust's governing board, or (B) contributes more than 50 percent of the trust's annual receipts. Contributions made on behalf of the organization or its members shall be considered contributions by the labor organization. The Department assumes that each Form LM–2 filer will spend approximately 1.31 hours contacting all the section 3(l) trusts listed on their Form LM–2 to determine whether a Form T–1 is required. It should be noted that it is unlikely that labor organizations will need to contact each trust listed on its Form LM–2 as some obviously will or will not meet the filing threshold. For fiscal year 2005, the Department received approximately 4,452 Form LM–2 reports. Therefore, the Department estimates that there are 4,452 reporting labor organizations with

receipts of $250,000 or more.[14] The Department estimates that for these 4,452 labor organizations, 2,476 Form T–1s will be filed. This cohort represents 18.5 percent of all labor organizations covered by the LMRDA. *See* Table 2. These figures differ from the Department's 2003 estimates where it was assumed that 2,769 Form T–1s would be filed annually. 68 FR 58435. The differences between today's estimates and those used in the 2003 rule reflect the narrower reach of this rule.

Today's estimates, like the 2002 NPRM and the 2003 and 2006 rules, are based on a three-tier analysis of labor organizations organized by receipt size. The Department first assumed that 10 percent of the 1,317 labor organizations with annual receipts of $250,000 to $499,999.99 (Tier I) would file one Form T–1. Second, it was assumed that 25 percent of the 3,083 labor organizations with annual receipts of $500,000 to $49.9 million (Tier II) would file on average two Form T–1s. Third, it was assumed that 100 percent of the 52 labor organizations with annual receipts of $50 million or more (Tier III) would file an average of four Form T–1 reports each. The implementation of a tier system is based on the underlying assumption that the size of a labor organization, as measured by the amount of its annual receipts, will affect its recordkeeping and reporting burden for Form T–1. Larger labor organizations have more trusts for which to account: the three tiers are constructed to differentiate these relative burdens among those labor organizations with $250,000 or more in receipts (68 FR 58433).[15]

TABLE 2

Tier System Based on FY 2005 Figures and Assumptions in 2006 Rule

Total Labor Organizations with 250,000 or more in receipts: 4,452.
Tier I ($250,000–499,999 receipts): 1,317 × 10 percent = (# filers) × 1 (# reports) = 132.
Tier II ($500,000–49.9 mil receipts): 3,083 × 25 percent = (# filers) × 2 (# reports) = 1,542.
Tier III ($50 mil and higher receipts): 52 × 100 percent = (# filers) × 4 (# reports) = 208.
Estimated Annual Form T–1 Filings 1,882.

Tier System Based on FY 2005 Figures and Assumptions Based on Changes in This Proposal

Total Labor Organizations with $250,000 or more in receipts: 4,452.
Tier I ($250,000–499,999 receipts): 1,317 × 13 percent = (# filers) × 1 (# reports) = 171.
Tier II ($500,000–49.9 mil receipts): 3,083 × 33 percent = (# filers) × 2 (# reports) = 2,035.
Tier III ($50 mil and higher receipts): 52 × 100 percent = (# filers) × 5.2 (# reports) = 270.
Estimated Annual Form T–1 Filings 2,476.

These numbers are higher than the estimates in the 2003 and 2006 rulemaking. In the current paperwork clearance (OMB # 1215–0188), the Department estimated 1,664 Form T–1s would be filed under the requirements published in 2006. Under the proposed requirements, the Department estimates that 2,476 reports will have to be filed.[16] This estimate was obtained by taking the assumptions from the 2006 final rule, adjusting these assumptions by the number of current Form LM–2 filers and then increasing by 30 percent per tier the anticipated number of Form T–1s that would be filed. This increase is due to the elimination of the receipts thresholds for filing and the filing exemption for the ERISA Form 5500 that was found in the previous rulemakings. These changes are reflected in the estimated percentage of filers, which are higher in the second data set in Table 2.

The Department's cost estimates include costs for both labor and equipment that will be incurred by filers. The labor costs reflect the Department's assumption that labor organizations and trusts will rely upon the services of some or all of the following positions (president, secretary-treasurer, accountant, bookkeeper, computer programmer, lawyer, consultant) and the compensation costs for these positions, as measured by wage rates and employer costs published by the Bureau of Labor Statistics or derived from data in the Department's Electronic Labor Organization Reporting System database (''e.LORS''), which stores and automatically culls certain information, such as labor organization officer and employee salaries, from annual reports submitted by labor organizations. The Department also made assumptions relating to the time that particular tasks or activities would take. The activities generally involve only one of the three distinct ''operational'' phases of the rule: first, tasks associated with modifying bookkeeping and accounting practices, including the modification or purchase of software, to capture data needed to prepare the required reports; second, tasks associated with recordkeeping; and third, tasks associated with completing the report and all appropriate levels of review and signature. Where an estimate depends upon the number of labor organizations subject to the LMRDA or included in one of the tier groups, the Department has relied upon data in the e.LORS system (for the years stated for each example in the text or tables).

The relative burden associated with the rule will correspond to the following predictable stages: determining whether a section 3(l) trust meets the filing requirements; review of the instructions and forms; adjustments to or acquisition of accounting software and computer hardware; changing accounting structures and developing, testing, reviewing, and documenting accounting software queries as well as designing query reports; training officers and employees involved in bookkeeping and accounting functions; the actual recordkeeping of data; and additional review by trust officials and the reporting labor organization's president and secretary-treasurer. As those labor organizations that will be required to file Form T–1 already are required to file Form LM–2, which requires the use of digital signatures, Form T–1 filers will not incur an additional cost or burden associated with the need to affix a digital signature to the Form T–1.

Burden can be categorized as recurring or non-recurring, with the latter primarily associated with the initial implementation stages. Recordkeeping burden, as distinct from reporting burden, will predominate during the first months of implementation. Burden can be reasonably estimated to vary over time with the greatest burden in the initial year, decreasing in later years as filers gain experience. Estimates for each of the first three years and a three-year

[14] These estimates for the total number of labor organizations and the number of labor organizations by tier are somewhat higher than the numbers reflected in the 2006 analysis. The difference is due to natural variations in the universe of filers. As economic conditions change the number of labor organizations as a whole and the number of labor organizations within each tier varies.

[15] Comments are invited on the methodology and assumptions underlying the Department's burden analysis. Because labor organizations have not previously been required to report on most section 3(l) trusts, the Department particularly invites comment on the number of section 3(l) trusts for which a particular labor organization will have to file a Form T–1 under the proposal and whether that number is likely to be consistent for labor organizations within the same tier as the commenting labor organization. Additionally, comments are requested on the assumption, discussed in the next paragraph of the text, relating to the burden that some labor organizations may face in obtaining information about the need to file a Form T–1 for some section 3(l) trusts.

[16] The difference between the 2003 and 2006 estimates was due to the narrower reach of the 2006 rule, i.e., its adoption of the majority control rule embodied in the 2006 rule and continued in this proposal.

average will provide useful information to assess the burden. Burden can be usefully reported as an overall total for all filers in terms of hours and cost. The estimated burden associated with the current LM forms is the appropriate baseline for estimating the burden and cost associated with the Form T–1 because only a subset of those labor organizations which file Form LM–2 will be required to file Form T–1. As the Form T–1 will be filed only by labor organizations with $250,000 or more in receipts, which is the dollar threshold for the Form LM–2, it is presumed that many of the same labor organization and/or outside personnel will be performing the recordkeeping and responding duties. Therefore, these estimates are used as the Form T–1 baseline.

For each of the three tiers, the Department estimated burden hours for the nonrecurring (first year) recordkeeping and reporting requirements, the recurring recordkeeping and reporting burden hours, and a three-year annual average for the nonrecurring and recurring burden hours similar to the way it has previously estimated the burden hours when updating financial disclosure forms required by the LMRDA. The Department estimates that under the proposal, on average, each labor organization will spend approximately 1.31 hours each year determining whether it has any section 3(l) trusts listed on its Form LM–2 that meet the Form T–1 filing requirements. As shown on Table 3, the Department estimates the burden required for filing the Form T–1 for all three tiers to be 2.4 hours to provide the trust with information about the Form T–1, 4.3 hours for reviewing the form and instructions, and 8.0 non-recurring (first year) hours for installing, testing, and reviewing acquired software/hardware and/or implementing recordkeeping and/or reporting procedures. The time required to read and review the form and instructions is estimated to decline to 2.0 hours the second year and 1.0 hour the third year as labor organizations and trusts become more familiar with the form.

The Department estimates the average reporting burden required to complete pages one and two of the Form T–1 for each of the three tiers to be 6.1 hours and the average recordkeeping burden associated with the items on pages one and two to be 1.6 hours. The Department also estimates that trusts will spend 2.0 hours reviewing the form once it is completed. These estimates are proportionally based on the recordkeeping and reporting burden estimate for the first two pages of the current Form LM–4, which are very similar to the first two pages of the Form T–1. The first two pages of Form LM–4 have 21 items (8 questions that identify the labor organization, four yes/no questions, seven summary numbers for: maximum amount of bonding, number of members, total assets, liabilities, receipts, and disbursements, total disbursements to officers, and a space for additional information). The first two pages of Form T–1 have 25 items (14 questions that identify the labor organization and trust, six yes/no questions, four summary numbers for total assets, liabilities, receipts, and disbursements, and a space for additional information).

For the receipts and disbursements schedules, the Department estimates that on average Form T–1 respondents will take 9.8 hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel for each of the schedules. Further, the Department also estimates that on average Form T–1 respondents (a labor organization is counted as a respondent for each Form T–1 it files) will take 1.2 (recurring) hours to prepare and transmit the receipts schedule and 1.4 hours to prepare and transmit the disbursements schedule. The Department also estimates that on average Form T–1 respondents will take 8.3 hours (recurring) of recordkeeping burden for each schedule to maintain the additional information required by the rule.

For the Form T–1 disbursements to officers and employees of the trust schedule, the Department estimates that it will take respondents an average 2.8 hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel. Further, the Department estimates it will take on average 0.8 hours to prepare and transmit the schedule.

The Department also estimates that it will take 2.0 hours for the trust to review the Form T–1 and 1.0 hours for this information to be sent to the labor organization filer. In addition, the Department estimates that the labor organization president and secretary-treasurer will take 4.0 hours to review and sign the form. The time for the president and secretary-treasurer to review and sign the form declines to 2.0 hours the second year and 1.0 hour the third year as they become more familiar with the form.

TABLE 3.—SUMMARY OF AVERAGE FIRST YEAR BURDEN FOR FORM T–1

Reporting or recordkeeping requirement	Nonrecurring burden hours	Reporting burden hours	Recordkeeping burden hours
Information on Form T–1 Provided to Trust	0.0	2.4	0.0
Review Form T–1 and Instructions	0.0	4.3	0.0
Install, Test, and Review Software	8.0	0.0	0.0
Pages 1 and 2	0.0	6.1	1.6
Individually Identified Receipts	9.8	1.2	8.3
Individually Identified Disbursements	9.8	1.4	8.3
Disbursements to Officers and Employees	2.8	0.8	0.0
Review by Trust	0.0	2.0	0.0
Form/Information Sent to Labor Organization	0.0	1.0	0.0
President Review and Sign Off	0.0	2.0	0.0
Treasurer Review and Sign Off	0.0	2.0	0.0
Total First Year Burden for Form T–1	30.4	23.2	18.1

Note: The burden for labor organization to determine whether a Form T–1 is required to be filed for its section 3(l) trusts is explained in the text preceding this table. This table displays the average burden associated with each Form T–1 that is actually filed.

Note also: Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards.

The Department's cost estimates are based on wage-rate data obtained from BLS for personnel employed in service industries (*i.e.*, accountant, bookkeeper, etc.) and adjusted to be total compensation estimates based on the BLS Employer Cost data from the 2006 NCS.

The Department estimates that, on average, the completion by a labor organization of Form T–1 will involve an independent and/or in-house accountant, a bookkeeper or clerk, its president, and its secretary-treasurer. Based on the 2006 NCS,[17] an independent accountant/auditor earns on average $27.22 per hour (accountants employed by labor organizations are presumed to make the same average salary). Based on reviewed annual labor organization reports (the latest reports on file), labor organization personnel earn on average the amounts listed below, separated by tier.

TABLE 4.—LABOR ORGANIZATION WAGE RATES

Position	Tier I	Tier II	Tier III
President	$15.52	$73.06	$110.98
Secretary/Treasurer	15.36	58.83	94.29
Outside Accountant	27.22	27.22	27.22
Bookkeeper/Clerk	17.96	21.17	26.88
Weighted Average	15.89	35.19	36.74

Given the nexus between a trust and a labor organization for purposes of Form T–1, the Department believes that the salary rates of labor organization officers and employees are applicable to corresponding trust positions.

The Department estimates the average reporting and recordkeeping burden for Form T–1 to be 71.7 hours per respondent in the first year (including non-recurring implementation costs), 33.9 hours per respondent in the second year, and 30.4 hours per respondent in the third year. As stated above, the Department estimates that each Form LM–2 filer will spend, on average, approximately 1.31 hours each year determining whether it has any section 3(l) trusts listed on its Form LM–2 that meet the Form T–1 filing requirements. The Department estimates the total annual burden hours on labor organizations to determine whether they must file a Form T–1 for any section 3(l) trust listed on their Form LM–2 to be approximately 5,832 hours. The Department estimates that labor organizations with trusts that meet the filing requirement, on average, will spend 71.7 hours in the first year (including non-recurring implementation costs), 33.9 hours in the second year, and 30.4 hours in the third year fulfilling the filing requirements for each of its qualifying trusts. The Department estimates the total annual burden hours for respondents who file Form T–1 to be 177,529 hours in the first year, 83,936 hours in the second year, and 75,270 hours in the third year (*see* Table 5). Under this proposed rule, only the estimated number of filers, not the form itself, has changed from the 2003 and 2006 rules; therefore, the current burden hour estimates, per respondent, are identical to the 2003 and 2006 estimates. *See* 68 FR 58446 and 71 FR 57116.

The Department estimates the average annual cost for the Tier I Form T–1 filers to be $1,139.31 per Tier I respondent in the first year (including non-recurring implementation costs) ($71.7 \times \$15.89 = \$1,139.31$); $538.67 per Tier I respondent in the second year ($33.9 \times \$15.89 = \$538.67$); and $483.06 per Tier I respondent in the third year ($30.4 \times \$15.89 = \$483.06$).

The Department estimates the average annual cost for the Tier II Form T–1 filers to be $2,523.12 per Tier II respondent in the first year (including non-recurring implementation costs) ($71.7 \times \$35.19 = \$2,523.12$); $1,192.94 per Tier II respondent in the second year ($33.9 \times \$35.19 = \$1,192.94$); and $1,069.78 per Tier II respondent in the third year ($30.4 \times \$35.19 = \$1,069.78$).

The Department estimates the average annual cost for the Tier III Form T–1 filers to be $2,634.26 per Tier III respondent in the first year (including non-recurring implementation costs) ($71.7 \times \$36.74 = \$2,634.26$); $1,245.49 per Tier III respondent in the second year ($33.9 \times \$36.74 = \$1,245.49$); and $1,116.90 per Tier III respondent in the third year ($30.4 \times \$36.74 = \$1,116.90$). These per respondent figures are also close to the 2003 and 2006 estimates (*see* 68 FR 58446 and 71 FR 57116).

The Department also estimates the total annual cost to respondents associated with Form T–1 to be $6 million in the first year, $2.9 million in the second year, and $2.6 million in the third year. These estimates are similar to costs estimated in 2003 ($5.5, $2.6, and $2.3 million), 68 FR 58466, but higher than the 2006 estimates ($3.3, $1.6, and $1.4 million) due to the change in the trigger for filing the form. *See* 71 FR 57116 for 2006 estimates.

TABLE 5.—REPORTING AND RECORDKEEPING BURDEN HOURS AND COSTS FOR FORM T–1

Form	Number of responses	Reporting hours per respondent	Total reporting hours	Record-keeping hours per respondent	Total record-keeping hours	Total burden hours per espondent	Total burden hours
Form T–1/First Year	2,476	23.2	57,443	48.5	120,086	71.7	177,529
Second Year	2,476	15.8	39,121	18.1	44,816	33.9	83,936
Third Year	2,476	12.3	30,455	18.1	44,816	30.4	75,270
Three-Year Average	2,476	17.1	42,340	28.2	69,823	45.3	112,163

[17] National Compensation Survey: Occupational Wages in the United States, June 2006 (BLS July 2007, p. 5.). These amounts are higher than the estimates in the 2006 rule, which were based on 2004 NCS data.

Note: The burden for labor organization to determine whether a Form T–1 is required to be filed for its section 3(l) trusts is explained in the text preceding Table 3. Each table displays the reporting and burden associated with each Form T–1 that is actually filed.

Note also: Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards

Appropriate information technology is used to reduce burden and improve efficiency and responsiveness. The current forms can be downloaded from the OLMS Web site. OLMS has also implemented a system to require Form LM–2 and Form T–1 filers and permit Form LM–3 and Form LM–4 filers to submit forms electronically with digital signatures.

Labor organizations are currently required to pay a minimal fee to obtain electronic signature capability for the two officers who sign the form.

The OLMS Internet Disclosure site is available for public use. The site contains a copy of each labor organization's annual financial report for reporting year 2000 and thereafter as well as an indexed computer database on the information in each report that is searchable through the Internet. Form T–1 filings will be available on the Web site.

OLMS includes e.LORS information in its outreach program, including compliance assistance information on the OLMS Web site, individual guidance provided through responses to e-mail, written, or telephone inquiries, and formal group sessions conducted for labor organization officials regarding compliance.

Information about this system can be obtained on the OLMS Web site at *http:// www.olms.dol.gov.* Digital signatures ensure the authenticity of the reports.

C. Federal Costs Associated With Proposed Rule

The estimated annualized Federal cost of the proposed Form T–1 is $228,682.28. This represents estimated operational expenses such as equipment, overhead, and printing as well as salaries and benefits for the OLMS staff in the National Office and field offices that are involved with reporting and disclosure activities. These estimates include time devoted to: (a) Receipt and processing of reports; (b) disclosing reports to the public; (c) obtaining delinquent reports; (d) obtaining amended reports if reports are determined to be deficient; (e) auditing reports; and (f) providing compliance assistance training on recordkeeping and reporting requirements.

Currently, the Department is soliciting comments concerning the information collection request (''ICR'') for the information collection requirements included in this proposed regulation at § 403.2, Annual financial report which, when implemented will revise the existing OMB control number 1215–0188. A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov*. Please note that comments submitted in response to this notice will be made a matter of public record.

The Department hereby announces that it has submitted a copy of the proposed regulation to the Office of Management and Budget (''OMB'') in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- 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 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.*, by permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Employee Standards Administration.

Title: Labor Organization and Auxiliary Reports.

OMB Number: 1215–0188.

Affected Public: Private Sector: Not-for-profit institutions.

Number of Annual Responses: 33,333.

Frequency of Response: Annual for most forms.

Estimated Total Annual Burden Hours: 3,568,180.

Estimated Total Annual Burden Cost: $70,491,590.

Potential respondents are hereby duly notified that such persons are not required to respond to a collection of information or revision thereof unless approved by OMB under the PRA and it displays a currently valid OMB control number. *See* 35 U.S.C. 3506(c)(1)(B)(iii)(V). In accordance with 5 CFR 1320.11(k), the Department will publish a notice in the **Federal Register** informing the public of OMB's decision with respect to the ICR submitted thereto under the PRA.

Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks)

In accordance with Executive Order 13045, the Department has evaluated the environmental safety and health effects of the proposed rule on children. The Department has determined that the proposed rule will have no effect on children.

Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

The Department has reviewed this proposed rule in accordance with Executive Order 13175, and has determined that it does not have ''tribal implications.'' The proposed rule does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights)

This proposed rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

Executive Order 12988 (Civil Justice Reform)

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The proposed rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Environmental Impact Assessment

The Department has reviewed the proposed rule in accordance with the requirements of the National Environmental Policy Act (''NEPA'') of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department's NEPA procedures (29 CFR part 11). The proposed rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use)

This proposed rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 29 CFR Part 403

Labor unions, Reporting and recordkeeping requirements.

Text of Proposed Rule

Accordingly, the Department proposes to amend part 403 of 29 CFR Chapter IV as set forth below:

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

1. The authority citation for Part 403 is revised to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4–2007, May 2, 2007, 72 FR 26159.

2. In § 403.2, paragraph (d) is revised to read as follows:

§ 403.2 Annual financial report.

* * * * *

(d)(1) Every labor organization with annual receipts of $250,000 or more shall file a report on Form T–1 for each trust that meets the following conditions:

(i) The trust is of the type defined by section 3(l) of the LMRDA, *i.e.*, the trust was created or established by a labor organization or a labor organization appoints or selects a member of the trust's governing board; and the trust has as a primary purpose to provide benefits to the members of the labor organization or their beneficiaries (29 U.S.C. 402(1)); and the labor organization, alone or with other labor organizations, either:

(A) Appoints or selects a majority of the members of the trust's governing board; or

(B) Contributes revenues to the trust that exceed 50 percent of the trust's revenue during the trust's fiscal year; and

(ii) None of the exceptions discussed in paragraph (d)(2) of this section apply.

(iii) For purposes of paragraph (d)(1)(i)(B), contributions made on behalf of the labor organization or its members shall be considered contributions by the labor organization.

(2) A separate report shall be filed on Form T–1 for each such trust within 90 days after the end of the labor organization's fiscal year in the detail required by the instructions accompanying the form and constituting a part thereof, and shall be signed by the president and treasurer, or corresponding principal officers, of the labor organization. No Form T–1 should be filed for any trust that meets the statutory definition of a labor organization and already files a Form LM–2, Form LM–3, or Form LM–4, nor should a report be filed for any entity that the LMRDA exempts from reporting. No report need be filed for a trust established as a Political Action Committee (''PAC'') if timely, complete and publicly available reports on the PAC are filed with a Federal or state agency, or for a trust established as a political organization under 26 U.S.C. 527 if timely, complete, and publicly available reports are filed with the Internal Revenue Service. An audit that meets the criteria specified in the instructions for Form T–1 may be substituted for all but page 1 of the Form T–1. If such labor organization is in trusteeship on the date for filing the annual financial report, the labor organization that has assumed trusteeship over such subordinate labor organization shall file such report as provided in § 408.5 of this chapter.

3. Amend § 403.5 by revising paragraph (d) to read as follows:

§ 403.5. Terminal financial report.

* * * * *

(d) If a labor organization filed or was required to file a report on a trust pursuant to § 403.2(d) and that trust loses its identity during its subsequent fiscal year through merger, consolidation, or otherwise, the labor organization shall, within 30 days after such loss, file a terminal report on Form T–1, with the Office of Labor-Management Standards, signed by the president and treasurer or corresponding principal officers of the labor organization. For purposes of the report required by this paragraph, the period covered thereby shall be the portion of the trust's fiscal year ending on the effective date of the loss of its reporting identity.

4. In § 403.8, redesignate paragraphs (c) and (d) as paragraphs (d) and (e), and add a new paragraph (c) to read as follows:

§ 403.8 Dissemination and verification of reports.

* * * * *

(c)(1) If a labor organization is required to file a report under this part using the Form T–1 and indicates that it has failed or refused to disclose information required by the Form T–1 concerning any disbursement or receipt to an individual or entity in the amount of $10,000 or more, or any two or more disbursements or receipts that, in the aggregate, amount to $10,000 or more, because disclosure of such information may be adverse to the organization's legitimate interests, then the failure or refusal to disclose the information shall be deemed ''just cause'' for purposes of paragraph (a) of this section.

(2) Disclosure may be adverse to a labor organization's legitimate interests under this paragraph if disclosure would reveal confidential information concerning the organization's organizing or negotiating strategy or individuals paid by the trust to work in a non-union facility in order to assist the labor organization in organizing employees, provided that such individuals are not employees of the trust who receive more than $10,000 in the aggregate in the reporting year from the trust.

(3) This provision does not apply to disclosure that is otherwise prohibited by law or that would endanger the health or safety of an individual.

* * * * *

Signed in Washington, DC, this 26th day of February 2008.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

Appendix

Note: This appendix, which will not appear in the Code of Federal Regulations, contains the proposed Form T–1 and instructions and related charts.

BILLING CODE 4510–86–P

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210

FORM T-1 TRUST ANNUAL REPORT

Form Approved
Office of Management and Budget
No xxxxxxxx
Expires xx-xx-xxxx

This report is mandatory under P L 86-257 as amended Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U S C 439 or 440

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT

For Official Use Only	1 FILE NUMBERS UNION a) ___ - ___ TRUST b) T ___ - ___	2 PERIOD COVERED MO DAY YEAR From ___ ___ ___ Through ___ ___ ___	3 (a) AMENDED - If this is an amended report, check here ☐ (b) HARDSHIP - If filing under the hardship procedures, check here ☐ (c) TERMINAL - If this is a terminal report, check here ☐

4 NAME OF UNION		10 NAME OF TRUST	
5 DESIGNATION (Local, Lodge, etc.)	6 DESIGNATION NUMBER	11 TAX STATUS OF TRUST	
7 UNIT NAME OF UNION (if any)		12 PURPOSE OF TRUST	
8 MAILING ADDRESS OF UNION (use capital letters)		13 MAILING ADDRESS OF TRUST (use capital letters)	
First Name	Last Name	First Name	Last Name
P O Box - Building and Room Number (if any)		P O Box - Building and Room Number (if any)	
Number and Street		Number and Street	
City		City	
State	Zip Code + 4	State	Zip Code + 4

9. Are the union's records kept at its mailing address? (If "No," provide address in Item 25.) Yes ☐ No ☐

14. Are the trust's records kept at its mailing address? (If "No," provide address in Item 25.) Yes ☐ No ☐

15 Will the labor organization be submitting an independent, certified audit in place of the remainder of Form T-1? Yes ☐ No ☐

Each of the undersigned, duly authorized officers of the above labor organization, declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See Section V on penalties in the instructions.)

26 SIGNED _____ PRESIDENT
on ___/___/___ ( ) -
Date Telephone Number

27 SIGNED _____ TREASURER
on ___/___/___ ( ) -
Date Telephone Number

COMPLETE ITEMS 16 THROUGH 25

UNION FILE NUMBER (a) ☐☐☐ – ☐☐☐

TRUST FILE NUMBER (b) T☐☐ – ☐☐☐

16. During the reporting period did the trust discover any loss or shortage of funds or other property? *(Answer "Yes" even if there has been repayment or recovery.)* Yes ☐ No ☐

17. During the reporting period did the trust acquire or dispose of any goods or property in any manner other than by purchase or sale? Yes ☐ No ☐

18. During the reporting period did the trust liquidate, reduce or write-off any liabilities without full payment of principal and interest? Yes ☐ No ☐

19. Has the trust extended any loan or credit during the reporting period to any officer or employee of the reporting labor organization at terms below market rates? Yes ☐ No ☐

20. During the reporting period did the trust liquidate, reduce or write-off any loans receivable due from officers or employees of the reporting labor organization without full receipt of principal and interest? Yes ☐ No ☐

If the answer to any of the above questions is "Yes," provide details in Item 25 (Additional Information) as explained in the instructions for each item.

21. Enter the total assets of the trust at the end of the reporting period. $

22. Enter the total liabilities (debts) of the trust at the end of the reporting period. $

23. Enter the total receipts of the trust during the reporting period. $

24. Enter the total disbursements of the trust during the reporting period. $

Please be sure to:
* Enter your labor organization's 6-digit file number and the trust's 7-digit file number in Item 1.
* Have your labor organization's president and treasurer sign the Form T-1 in Items 26 and 27.
* Complete Schedules 1 through 3

25. ADDITIONAL INFORMATION *(if more space is needed, attach additional pages properly identified.)*

Item Number	

SCHEDULE 1 - INDIVIDUALLY IDENTIFIED RECEIPTS

(List all entities from whom the trust received a total of $10,000 or more during the reporting period.)

UNION FILE NUMBER (a) ___ – ___

TRUST FILE NUMBER (b) T ___ – ___

Initial Itemization Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Receipts Listed Above		
	(G) Total of All Receipts from Continuation Pages with this Payer		
	(H) Total of All Itemized Receipts with this Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Receipts with this Payer		
	(J) **Total of All Receipts with this Payer** (Sum of (H) and (I))		

SCHEDULE 2 - INDIVIDUALLY IDENTIFIED DISBURSEMENTS

(List all entities that received $10,000 or more in total disbursements from the trust during the reporting period.)

UNION FILE NUMBER (a) -

TRUST FILE NUMBER (b) T -

Initial Itemization Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Disbursements Listed Above		
	(G) Total of All Disbursements from Continuation Pages with this Payee		
	(H) Total of All Itemized Disbursements to this Payee (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Disbursements to this Payee		
	(J) **Total of All Disbursements to this Payee** (Sum of (H) and (I))		

SCHEDULE 3 - DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST

UNION FILE NUMBER (a): ___ - ___

TRUST FILE NUMBER (b): T ___ - ___

Page 1 of ____

Full Name / Title	(A) LAST, FIRST, MIDDLE INITIAL / Treasurer, Trustee, Attorney, etc.	Gross Salary Disbursements (before any deductions) (B)	Allowances (C)	Disbursements for Official Business (D)	Other Disbursements (E)	(F) TOTAL
1. Full Name						
Title						
2. Full Name						
Title						
3. Full Name						
Title						
4. Full Name						
Title						
5. Full Name						
Title						
6. Full Name						
Title						
7. Full Name						
Title						
8. Full Name						
Title						
9. Full Name						
Title						
10. Total from Continuation pages (if any)						
11. Total of Lines 1 through 10						

Form T-1 (2008)

CONTINUATION ITEMIZATION PAGE FOR RECEIPTS/DISBURSEMENTS SCHEDULES 1 and 2

UNION FILE NUMBER (a) ___ – ___

TRUST FILE NUMBER (b) T ___ – ___

Schedule	Page Number	Total Number of Continuation Pages

Continuation Itemization Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of All Transactions Listed Above		

Form 1-1 (2008)

SCHEDULE 3 - DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST

UNION FILE NUMBER (a) ___ – ___

TRUST FILE NUMBER (b) T ___ – ___

Page ____ of ____ **Continuation Page**

Full Name / Title	(A) LAST, FIRST, MIDDLE INITIAL / Treasurer, Trustee, Attorney, etc.	Gross Salary Disbursements (before any deductions) (B)	Allowances (C)	Disbursements for Official Business (D)	Other Disbursements (E)	TOTAL (F)
1 Full Name						
Title						
2 Full Name						
Title						
3 Full Name						
Title						
4. Full Name						
Title						
5. Full Name						
Title						
6. Full Name						
Title						
7. Full Name						
Title						
8. Full Name						
Title						
9 Full Name						
Title						
10. Total of Lines 1 through 9						

Form T-1 (2008)

INSTRUCTIONS FOR FORM T-1 TRUST ANNUAL REPORT

GENERAL INSTRUCTIONS

I. WHO MUST FILE

Every labor organization subject to the Labor-Management Reporting and Disclosure Act, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA), with total annual receipts of $250,000 or more (labor organization), must file Form T-1 each year for each trust in which it is interested, as defined in the LMRDA at 29 U.S.C. 402(l), if the following conditions exist:

The trust is a trust defined by section 3(l) of the LMRDA, that is, the trust is a trust or other fund or organization (1) that was created or established by a labor organization or a labor organization appoints or selects a member to the trust's governing board; and (2) the trust has as a primary purpose to provide benefits to the members of the labor organization or their beneficiaries (29 U.S.C. 402(l)); and the labor organization alone, or in combination with other labor organizations, either

appoints or selects a majority of the members of the trust's governing board; or

contributes greater than 50% of the trust's revenues during the one-year reporting period.

Any contributions to the trust on behalf of the labor organization or its members of the labor organization shall be considered the labor organization's contributions for this purpose.

No Form T-1 should be filed for any trust that meets the statutory definition of a labor organization and already files a Form LM-2, LM-3, or LM-4, nor should a report be filed for any entity that is expressly exempted from reporting in the LMRDA. No report need be filed for a trust established as a Political Action Committee (PAC) if timely, complete, and publicly available reports on the PAC are filed with a Federal or state agency, or for a trust established as a political organization under 26 U.S.C. 527 if timely, complete, and publicly available reports are filed with the Internal Revenue Service. An abbreviated report may be filed for any covered trust or trust fund for which an independent audit has been conducted, in accordance with the standards (as adopted from 29 CFR. 2520.103-1) as discussed in the next paragraph.

A labor organization may complete only Items 1 through 15 and Items 26-27 (Signatures) of Form T-1 if annual audits

are prepared according to the following standards and a copy of the audit is filed with the Form T-1. The audit must be performed by an independent qualified public accountant, who after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with Generally Accepted Accounting Principles (GAAP) or Other Comprehensive Basis of Accounting (OCBOA). The audit must include notes to the financial statements that disclose, for the preceding twelve-month period: losses, shortages, or other discrepancies in the trust's finances; the acquisition or disposition of assets, other than by purchase or sale; liabilities and loans liquidated, reduced, or written off without the disbursement of cash; loans made to labor organization officers or employees that were granted at more favorable terms than were available to others; and loans made to officers and employees that were liquidated, reduced, or written off. The audit must be accompanied by schedules that disclose, for the preceding twelve-month period: a statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; a statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in $10,000 or more of commerce and the total of the transactions with each party.

Form T-1 must be filed with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor's (Department) Employment Standards Administration. The labor organization must file a separate Form T-1 for each trust that meets the above requirements. The LMRDA, CSRA, and FSA cover labor organizations that represent employees who work in private industry, employees of the U.S. Postal Service, and most Federal government employees. Questions about whether a labor organization is required to file should be referred to the nearest OLMS field office listed at the end of these instructions.

II. When to File

Form T-1 must be filed within 90 days of the end of the labor organization's fiscal year. The Form T-1 shall cover the trust's most recent fiscal year, *i.e.*, the fiscal year ending on or before the closing date of the labor organization's own fiscal year. The penalties for delinquency are described in Section V (Officer Responsibilities and Penalties) of these instructions.

If a trust for which a labor organization was required to file a Form T-1 goes out of existence, a terminal financial report must be filed within 30 days after the date it ceased to exist. Similarly, if a trust for which a labor organization was required to file a Form T-1 continues to exist, but the labor organization's interest in that trust ceases, a terminal financial report must be filed within 30 days after the date that the labor organization's interest in the trust ceased. See Section IX (Trusts That Have Ceased to Exist) of these instructions for information on filing a terminal financial report.

III. How to File

Form T-1 must be prepared using software available on the OLMS Web site at **http://www.olms.dol.gov** and must be submitted electronically to the Department. A Form T-1 filer will be able to file a report in paper format only if it applies for and is granted a continuing hardship exemption of up to one year, but a paper format copy may be submitted initially if the filer asserts a temporary hardship and files electronically thereafter.

Information on downloading the electronic filing software and a detailed user guide can be found on the OLMS Web site at http://www.olms.dol.gov.

HARDSHIP EXEMPTIONS

A labor organization that must file Form T-1 may assert a temporary hardship exemption or apply for a continuing hardship exemption to prepare and submit the report in paper format. If a labor organization files both Form LM-2 and Form T-1, the exemption must be separately asserted for each report, although in appropriate circumstances the same reasons may be used to support both exemptions. If it is possible to file Form LM-2, or one or more Form T-1s, electronically, no exemption should be claimed for those reports, even though an exemption is warranted for a related report.

TEMPORARY HARDSHIP EXEMPTION:

If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing of Form T-1, it may be filed in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing this form under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the above address, by email at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

CONTINUING HARDSHIP EXEMPTION:

(a) The labor organization may apply in writing for a continuing hardship exemption if Form T-1 cannot be filed electronically without undue burden or expense. Such written application shall be received at least thirty days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b).

The application must be mailed to the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5609
Washington, DC 20210-0001

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by e-mail at OLMS-

Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the justification for the requested time period of the exemption; (2) the burden and expense that the labor organization would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the labor organization shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of labor organization members and so notifies the applicant, the labor organization shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the labor organization shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form T-1 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing under the hardship exemption procedures.

Note: *If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

IV. Public Disclosure

The LMRDA requires that the Department make reports filed by labor organizations available for inspection by the public. Reports may be viewed and downloaded from the OLMS Web site at http://www.unionreports.gov. Reports may also be examined and copies purchased through the OLMS Public Disclosure Room (telephone: 202-693-0125) at the following address:

U.S. Department of Labor
Employment Standards Administration

Office of Labor-Management Standards
200 Constitution Avenue, NW

Room N-1519

Washington, DC 20210-0001

V. Officer Responsibilities and Penalties

The president and treasurer or the corresponding principal officers of the labor organization required to sign Form T-1 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in the report or in any information required to be submitted with it. Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form T-1 are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18 and 1746 of Title 28 of the United States Code.

The reporting labor organization and the officers required to sign Form T-1 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA (29 U.S.C. 440), provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

VI. Recordkeeping

The officers required to file Form T-1 are responsible for maintaining records that will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least five years after the date the report is filed. Any record necessary to verify, explain, or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, applicable resolutions, and any electronic documents used to complete and file the report.

SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS

VII. Labor Organizations in Trusteeship

Any labor organization that has placed a subordinate labor organization in trusteeship is responsible for filing the subordinate's annual financial reports. This obligation includes the requirement to file Form T-1 for any trusts in which the subordinate labor organization is interested. A trusteeship is defined in section 3(h) of the LMRDA (29 U.S.C. 402) as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws."

The report must be signed by the president and treasurer or corresponding principal officers of the labor organization that imposed the trusteeship and by the trustees of the subordinate labor organization. In order for the trustees to sign, click on the "Add Signature Block" button on page 1 to open a signature page near the end of the form.

VIII. Completing Form T-1

INTRODUCTION

Upon opening the Form T-1, a Document

Status dialog box displays to briefly explain the special features of this document. Click on the "close" button to proceed.

Items 1, 2, and 4 - 7 are "pre-filled" items. These fields were filled in by the software based on information you entered when you accessed and downloaded the form from our Web site. You cannot edit these fields.

Be sure to click on the "Validate Form" button after you have completed the form but before you sign it. This action will generate an "Errors Page" listing any errors that must be corrected before you sign the form.

ITEMS 1 THROUGH 20

Answer Items 1 through 20 as instructed. Select the appropriate box for those questions requiring a "Yes" or "No" answer; do not leave both boxes blank. Enter a single "0" in the boxes for items requiring a number or dollar amount if there is nothing to report.

1. FILE NUMBER — Enter in Item 1(a) the 6-digit (###-###) file number that OLMS assigned to the labor organization. If the labor organization does not have the number on file and cannot obtain the number from prior reports filed with the Department, the number can be obtained from the OLMS Web site at http://www.unionreports.gov or by contacting the nearest OLMS field office listed at the end of these instructions.

The software will enter the trust's 7-digit (T### ###) file number in Item 1(b) and at the top of each page of Form T-1. This is the number you entered when you downloaded Form T-1. If the number is incorrect, you must download another copy of the form using the correct number. For an initial filing of a Form T-1, this number may be obtained by calling the OLMS Division of Reports, Disclosure & Audits at (202) 693-0124 or by contacting OLMS at the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW

Room N-5616

Washington, DC 20210-0001

For future filings, if the labor organization does not have the number on file and cannot obtain the number from the trust or from prior reports filed with the Department, information on obtaining the number can be found on the OLMS website at http://www.olms.dol.gov.

2. PERIOD COVERED — The software will enter the beginning and ending dates of the period covered by this report. These are the dates you entered when you downloaded Form T-1. If the dates are incorrect, you must download another form using the correct dates.

If the fiscal year changed, enter in Item 2 (Period Covered) the ending date for the period of less than 12 months, which is the new fiscal year ending date, and report in Item 25 (Additional Information) that the trust changed its fiscal year. For example, if the fiscal year ending date changes from June 30 to December 31, a report must be filed for the partial year from July 1 to December 31. Thereafter, the annual report should cover a full 12-month period from January 1 to December 31.

3. AMENDED, HARDSHIP EXEMPTED, OR TERMINAL REPORT — Do not complete this item unless this report is an amended, hardship exempted, or terminal report. Select Item 3(a) if the labor organization is filing an amended Form T-1 correcting a previously filed Form T-1. Select Item 3(b) if the labor organization is filing under the hardship exemption procedures defined in Section III. Select Item 3(c) if the trust has gone out of business by disbanding, merging into

another organization, or being merged and consolidated with one or more trusts to form a new trust, or if the labor organization's interest in the trust has ceased and this is the terminal report for the trust. Be sure the date the trust ceased to exist is entered in Item 2 (Period Covered) after the word "Through." See Section IX (Trusts That Have Ceased to Exist) of these instructions for more information on filing a terminal report.

4. NAME OF UNION — Enter the name of the national or international labor organization or if the labor organization is a subordinate entity of such organization the name of the national or international labor organization that granted its charter. "Affiliates," within the meaning of these instructions, are labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relationship of parent and subordinate. For example, a parent body is an affiliate of all of its subordinate bodies, and all subordinate bodies of the same parent body are affiliates of each other.

If the labor organization has no such affiliation, enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

5. DESIGNATION — Enter the specific designation, if any, that is used to identify the labor organization, such as Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc.

6. DESIGNATION NUMBER — Enter the number or other identifier, if any, by which the labor organization is known.

7. UNIT NAME — Enter any additional or alternate name by which the labor organization is known, such as "Chicago Area Local."

8. MAILING ADDRESS OF UNION — Enter the current address where mail is most likely to reach the labor organization as quickly as possible. The first and last name of the person, if any, to whom such mail should be sent and any building and room number should be included.

9. PLACE WHERE UNION RECORDS ARE KEPT — If the records required to be kept by the labor organization to verify this report are kept at the address reported in Item 8 (Mailing Address of Union), answer "Yes." If not, answer "No" and provide in Item 25 (Additional Information) the address where the labor organization's records are kept.

10. NAME OF TRUST — The software will enter the name of the trust. This is the trust name you entered when you downloaded Form T-1. If the name is incorrect, you must download another form using the correct name.

This item cannot be edited. If the labor organization needs to change this information, contact the OLMS Division of Reports, Disclosure, and Audits by telephone at 202-693-0124, by e-mail at OLMS-Public@dol.gov, or by fax at 202-693-1345. Indicate that the subject of the inquiry is the Form T-1 pre-filled identifying information.

11. TAX STATUS OF TRUST — Select the tax status of the trust from the pull down menu.

12. PURPOSE — Enter the purpose of the trust. For example, if the trust is a credit union that provides loans to labor organization members, the purpose may be "credit union."

13. MAILING ADDRESS OF TRUST — The software will enter the current address where mail is most likely to reach the trust as quickly as possible. The first and last name of the person, if any, to whom such mail should be sent, and any building and room number should be included. These fields are pre-filled from the OLMS database, but can be edited by the filer.

14. PLACE WHERE TRUST RECORDS ARE KEPT — If the records required to be kept to verify this report are kept at the address reported in Item 13 (Mailing Address of Trust), answer "Yes." If not, answer "No" and provide in Item 25 (Additional Information) the address where the trust's records are kept. The labor organization need not keep separate copies of these records at its own location, as long as members have the same access to such records from the trust as they would be entitled to have from the labor organization.

Note: The president and treasurer of the labor organization are responsible for maintaining the records used to prepare the report.

15. AUDIT EXEMPTION — Answer "Yes" to Item 15 if the labor organization will be submitting an independent, certified audit in place of the remainder of Form T-1. If an audit report meeting the standards described in Section I (Who Must File) is submitted with a Form T-1 that has been completed for Items 1 through 15 then it is not necessary to complete Items 16 through 25, and Schedules 1 through 3. However, Items 26-27 (Signatures) must be completed.

16. LOSSES OR SHORTAGES — Answer "Yes" to Item 16 if the trust experienced a loss, shortage, or other discrepancy in its finances during the period covered. Describe the loss or shortage in detail in Item 25 (Additional Information), including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been an agreement to make restitution or any recovery by means of repayment, fidelity bond, insurance, or other means.

17. ACQUISITION OR DISPOSITION OF ASSETS — If Item 17 is answered "Yes," describe in Item 25 (Additional Information) the manner in which the trust acquired or disposed of the asset(s), such as donating office furniture or equipment to charitable organizations, trading in assets, writing off a receivable, or giving away other tangible or intangible property of the trust. Include the type of asset, its value, and the identity of the recipient or donor, if any. Also report in Item 25 the cost or other basis at which any acquired assets were entered on the trust's books or the cost or other basis at which any assets disposed of were carried on the trust's books.

For assets that were traded in, enter in Item 25 the cost, book value, and trade-in allowance.

18. LIQUIDATION OF LIABILITIES — If Item 18 is answered "Yes," provide in Item 25 (Additional Information) all details in connection with the liquidation, reduction, or writing off of the trust's liabilities without the disbursement of cash.

19. LOANS AT FAVORABLE TERMS — If Item 19 is answered "Yes," provide in Item 25 (Additional Information) all details in connection with each such loan, including the name of the labor organization officer or employee, the amount of the loan, the amount that was still owed at the end of the reporting period, the purpose of the loan, terms for repayment, any security for the loan, and a description of how the terms of the loan were more favorable than those available to others.

20. WRITING OFF OF LOANS — If Item 20 is answered "Yes," describe in Item 25 (Additional Information) all details in connection with each such loan, including the amount of the loan and the reasons for the writing off, liquidation, or reduction.

FINANCIAL DETAILS

REPORT ONLY DOLLAR AMOUNTS

Report all amounts in dollars only. Round cents to the nearest dollar. Amounts

ending in $.01 through $.49 should be rounded down. Amounts ending in $.50 through $.99 should be rounded up.

Enter a single "0" if there is nothing to report.

REPORTING CLASSIFICATIONS

Complete all items and lines on the form as given. Do not use different accounting classifications or change the wording of any item or line.

ITEMS 21 THROUGH 24

21. ASSETS — Enter the total value of all the trust's assets at the end of the reporting period including, for example, cash on hand and in banks, property, loans owed to the trust, investments, office furniture, automobiles, and anything else owned by the trust. Enter "0" if the trust had no assets at the end of the reporting period.

22. LIABILITIES — Enter the total amount of all the trust's liabilities at the end of the reporting period including, for example, unpaid bills, loans owed, the total amount of mortgages owed, payroll withholdings not transmitted by the end of the reporting period, and other debts of the trust. Enter "0" if the trust had no liabilities at the end of the reporting period.

23. RECEIPTS — Enter the total amount of all receipts of the trust during the reporting period including, for example, interest, dividends, rent, money from the sale of assets, and loans received by the trust. Enter "0" if the trust had no receipts during the reporting period.

24. DISBURSEMENTS — Enter the total amount of all disbursements made by the trust during the reporting period including, for example, net payments to officers and employees of the trust, payments for administrative expenses, loans made by the trust, taxes paid, and disbursements for the transmittal of withheld taxes and other payroll deductions. Enter "0" if the trust made no disbursements during the reporting period.

SCHEDULES 1 THROUGH 3

SCHEDULES 1 AND 2 — RECEIPTS AND DISBURSEMENTS

Schedules 1 and 2 provide detailed information on the financial operations of the trust.

All "major" receipts during the reporting period must be separately identified in Schedule 1. A "major" receipt includes: 1) any individual receipt of $10,000 or more; or 2) total receipts from any single entity or individual that aggregate to $10,000 or more during the reporting period. This process is discussed further below.

All "major" disbursements during the reporting period must be separately identified in Schedule 2. A "major" disbursement includes: 1) any individual disbursement of $10,000 or more; or 2) total disbursements to any single entity or individual that aggregate to $10,000 or more during the reporting period. This process is discussed further below.

Note: Disbursements to officers and employees of the trust who received more than $10,000 from the trust during the reporting period should be reported in Schedule 3, and need not also be reported in Schedule 2.

Example 1: The trust has an ongoing contract with a law firm that provides a wide range of legal services to which a single payment of $10,000 is made each month. Each payment would be listed in Schedule 2.

Example 2: The trust received a settlement of $14,000 in a small claims lawsuit. The receipt would be individually identified in Schedule 1.

Example 3: The trust made three payments of $4,000 each to an office supplies vendor for office supplies during

the reporting period. The $12,000 in disbursements to the vendor would be reported in Schedule 2 in line I of an Initial Itemization Page for that vendor.

Procedures for Completing Schedules 1 and 2

Complete an Initial Itemization Page and a Continuation Itemization Page(s), as necessary, for each payer/payee for whom there is (1) an individual receipt/disbursement of $10,000 or more or (2) total receipts/disbursements that aggregate to $10,000 or more during the reporting period. For each major receipt/disbursement, provide the full name and business address of the entity or individual, type of business or job classification of the entity or individual, purpose of the receipt/disbursement, date, and amount of the receipt/disbursement. Receipts/disbursements must be listed in chronological order.

An Initial Itemization Page must be completed for each payer/payee described above. Additional Itemization Page(s) for additional payers/payees can be generated and added to the end of Form T-1 by pressing the "Add More Receipts" or "Add More Disbursements" button located at the top of the first Initial Itemization Page. If the number of receipts/disbursements exceeds the number of space provided on the Initial Itemization Page a Continuation Itemization Page(s) can be generated and added to the end of the Form T-1 by pressing the "More Receipts for this Payee" or "More Disbursements for this Payer" button located below Column (A). The software will automatically enter the name, address, and type or classification of the payee/payer on the Continuation Itemization Page(s).

Enter in Column (A) the full name and business address of the entity or individual from which the receipt was received or to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not have access to the full address, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual, such as printing company, office supplies vendor, lobbyist, think tank, marketing firm, bookkeeper, receptionist, shop steward, legal counsel, union member, etc.

Enter in Column (C) the purpose of the receipt/disbursement, which means a brief statement or description of the reason the receipt/disbursement was made.

Enter in Column (D) the date that the receipt/disbursement was made. The format for the date must be mm/dd/yyyy. The date of receipt/disbursement for reporting purposes is the date the trust actually received or disbursed the money, rather than the date that the right to receive, or the obligation to disburse, was incurred.

Enter in Column (E) the amount of the receipt/disbursement.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the totals from any Continuation Itemization Pages for this payee/payer.

The software will enter in Line (H) the total of all itemized transactions with this payee/payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all other transactions with this payer/payee (that is, all individual transactions of less than $10,000 each).

The software will enter in Line (J) the total of all transactions with the payee/payer for this schedule (the sum of Lines (H) and (I))

Special Instructions for Reporting Credit Card Disbursements

Disbursements to credit card companies may not be reported as a single disbursement to the credit card company as the vendor. Instead, charges appearing on credit card bills paid during the reporting period must be allocated to the recipient of the payment by the credit card company according to the same process as described above.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the information required in the itemization schedule that is available to the labor organization.

For instance, in the case of a credit card transaction for which the receipt(s) and monthly statement(s) do not provide the full legal name of a payee and the trust does not have access to any other documents that would contain the information, the labor organization should report the name as it appears on the receipt(s) and statement(s). Similarly, if the receipt(s) and statement(s) do not include a full street address, the labor organization should report as much information as is available and no less than the city and state.

Once these transactions have been incorporated into the recordkeeping system they can be treated like any other transaction for purposes of assigning a description and purpose.

In instances when a credit card transaction is canceled and the charge is refunded in whole or part by entry of a credit on the credit card statement, the charge should be treated as a disbursement, and the credit should be treated as a receipt. In reporting the credit as a receipt, Column (C) of Schedule 1 must indicate that the receipt was in refund of a disbursement, and must identify the disbursement by date and amount.

Special Procedures for Reporting Confidential Information

Filers may use the procedure described below to report the following types of information:

- Information that would identify individuals paid by the trust to work in a non-union bargaining unit in order to assist the labor organization in organizing employees, provided that such individuals are not employees of the trust who receive more than $10,000 in the aggregate in the reporting year from the trust. Employees receiving more than $10,000 must be reported on Schedule 3;

- Information that would expose the reporting labor organization's prospective organizing strategy. The labor organization must be prepared to demonstrate that disclosure of the information would harm an organizing drive. Absent unusual circumstances information about past organizing drives should not be treated as confidential;

- Information that would provide a tactical advantage to parties with whom the reporting labor organization or an affiliated labor organization is engaged or will be engaged in contract negotiations. The labor organization must be prepared to demonstrate that disclosure of the information would harm a contract negotiation. Absent unusual circumstances information about past contract negotiations should not be treated as confidential;

- Information pursuant to a settlement that is subject to a confidentiality agreement, or that the labor organization or trust is otherwise prohibited by law from

disclosing; and,

- Information in those situations where disclosure would endanger the health or safety of an individual.

With respect to these specific types of information, if the reporting labor organization can demonstrate that itemized disclosure of a specific major receipt or disbursement, or aggregated receipt or disbursement, would be adverse to the labor organization or trust's legitimate interests, the labor organization may exclude the transaction from Schedules 1 and 2. In Item 25 (Additional Information) the labor organization must identify each schedule from which any itemized receipts or disbursements were excluded because of an asserted legitimate interest in confidentiality. The notation must describe the general types of information that were omitted from the schedule, but the name of the payer/payee, date, and amount of the transaction(s) is not required.

A labor organization member, however, has the statutory right "to examine any books, records, and accounts necessary to verify" the financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 U.S.C. CFR 403.8 (2002). Any exclusion of itemized receipts or disbursements from Schedules 1 or 2 would constitute a *per se* demonstration of "just cause" for purposes of this Act. Consequently, any labor organization member (and the Department), upon request, has the right to review the undisclosed information in the labor organization's possession at the time of the request that otherwise would have appeared in the applicable schedule if the information is withheld in order to protect confidentiality interests. The labor organization also must make a good faith effort to obtain additional information from the trust.

Information that is withheld from full disclosure because of risk to an individual's health or safety or where federal or state laws forbid the disclosure of the information is not subject to the *per se* disclosure rule.

SCHEDULE 3 — DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST

List the names and titles of all officers of the trust, whether or not any salary or disbursements were made to them or on their behalf by the trust. Report all direct and indirect disbursements to all officers of the trust and to all employees of the trust who received more than $10,000 in gross salaries, allowances, and other direct and indirect disbursements from the trust during the reporting period. If no direct or indirect disbursements were made to any officer of the trust enter 0 in Columns (B) through (F) opposite the officer's name.

Continuation pages can be generated if needed by clicking on the "Add More Disbursements To Members Of Trust" button located at the top of Schedule 3.

NOTE: *A "direct disbursement" to an officer or employee is a payment made by the trust to the officer or employee in the form of cash, property, goods, services, or other things of value.*

An "indirect disbursement" to an officer or employee is a payment made by the trust to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer or employee. "On behalf of the officer or employee" means received by a party other than the officer or employee of the trust for the personal interest or benefit of the officer or employee. Such payments include payments made by the trust for charges on an account of the trust for credit extended to or purchases by, or on behalf of, the officer or employee.

Column (A): Enter in Column (A) the last name, first name, and middle initial of each person who was either (1) an officer

of the trust at any time during the reporting period or (2) an employee of the trust who received $10,000 or more in total disbursements from the trust during the reporting period. Also enter the title or the position held by each officer or employee listed. If an officer or employee held more than one position during the reporting period, in Item 25 (Additional Information) list each position and the dates during which the person held the position.

Column (B): Enter the gross salary of each officer (before tax withholdings and other payroll deductions). Include disbursements by the trust for "lost time" or time devoted to trust activities.

Column (C): Enter the total allowances made by direct and indirect disbursements to each officer or employee on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals which must be reported in Column (D) or (E), as applicable.

Column (D): Enter all direct and indirect disbursements to each officer or employee that were necessary for conducting official business of the trust, except salaries or allowances which must be reported in Columns (B) and (C), respectively.

Examples of disbursements to be reported in Column (D) include: all expenses that were reimbursed directly to an officer or employee, meal allowances and mileage allowances, expenses for officers' or employees' meals and entertainment, and various goods and services furnished to officers or employees but charged to the trust. Such disbursements should be included in Column (D) only if they were necessary for conducting official business; otherwise, report them in Column (E). Include in Column (D) travel advances that meet the following conditions:

- The amount of an advance for a specific trip does not exceed the amount of expenses reasonably expected to be incurred for official travel in the near future, and the amount of the advance is fully repaid or fully accounted for by vouchers or paid receipts within 30 days after the completion or cancellation of the travel.
- The amount of a standing advance to an officer or employee who must frequently travel on official business does not unreasonably exceed the average monthly travel expenses for which the individual is separately reimbursed after submission of vouchers or paid receipts, and the individual does not exceed 60 days without engaging in official travel.

Do not report the following disbursements in Schedule 3, but they should be reported in Schedule 2 if they meet the definition of a major disbursement:

- Reimbursements to an officer or employee for the purchase of investments or fixed assets, such as reimbursing an officer or employee for a file cabinet purchased for office use;

- Indirect disbursements for temporary lodging (room rent charges only) or transportation by public carrier necessary for conducting official business while the officer or employee is in travel status away from his or her home and principal place of employment with the trust if payment is made by the trust directly to the provider or through a credit arrangement;

- Disbursements made by the trust to someone other than an officer or employee as a result of transactions arranged by an officer or employee in which property, goods, services, or other things of value were received by or on behalf of the trust rather than the officer or employee, such as rental of offices and meeting rooms, purchase of office supplies, refreshments and other expenses of meetings, and food and refreshments for the entertainment of groups other than the officers or

employees on official business;

- Office supplies, equipment, and facilities furnished to officers or employees by the trust for use in conducting official business; and

- Maintenance and operating costs of the trust's assets, including buildings, office furniture, and office equipment; however, see "Special Rules for Automobiles" below.

Column (E): Enter all other direct and indirect disbursements to each officer or employee. Include all disbursements for which cash, property, goods, services, or other things of value were received by or on behalf of each officer or employee and were essentially for the personal benefit of the officer or employee and not necessary for conducting official business of the trust.

Include in Column (E) all disbursements for transportation by public carrier between the officer or employee's home and place of employment or for other transportation not involving the conduct of official business. Also, include the operating and maintenance costs of all the trust's assets (automobiles, etc.) furnished to officers or employees essentially for the officers or employees' personal use rather than for use in conducting official business.

Column (F): The software will add Columns (B) through (E) of each line and enter the totals in Column (F).

The software will enter on Line 10 the totals from any continuation pages for Schedule 3.

The software will enter on Line 11 the totals of Lines 1 through 10 for Columns (B) through (F).

SPECIAL RULES FOR AUTOMOBILES

Include in Column (E) of Schedule 3 that portion of the operating and maintenance costs of any automobile owned or leased by the trust to the extent that the use was for the personal benefit of the officer or employee to whom it was assigned. This portion may be computed on the basis of the mileage driven on official business compared with the mileage for personal use. The portion not included in Column (E) must be reported in Column (D).

Alternatively, rather than allocating these operating and maintenance costs between Columns (D) and (E), if 50% or more of the officer or employee's use of the vehicle was for official business, the trust may enter in Column (D) all disbursements relative to that vehicle with an explanation in Item 25 (Additional Information) indicating that the vehicle was also used part of the time for personal business. Likewise, if less than 50% of the officer or employee's use of the vehicle was for official business, the trust may report all disbursements relative to the vehicle in Column (E) with an explanation in Item 25 indicating that the vehicle was also used part of the time on official business.

The amount of decrease in the market value of an automobile used over 50% of the time for the personal benefit of an officer or employee must also be reported in Item 25.

ADDITIONAL INFORMATION AND SIGNATURES

25. ADDITIONAL INFORMATION — Use Item 25 to provide additional information as indicated on Form T-1 and in these instructions. Enter the number of the item to which the information relates in the Item Number column if the software has not entered the number.

26-27. SIGNATURES — Before entering the date and signing the form, enter the telephone number at which the signatories conduct official business.

The completed Form T-1 that is filed with

OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the labor organization. If an officer other than the president or treasurer performs the duties of the principal executive or principal financial officer, the other officer may sign the report. If an officer other than the president or treasurer signs the report, enter the correct title in the title field next to the signature and explain in Item 70 (Additional Information) why the president or treasurer did not sign the report. Forms must be signed with digital signatures. Information about digital signatures can be obtained on the OLMS Web site at http://www.olms.dol.gov.

IX. Trusts That Have Ceased to Exist

If a trust has gone out of existence as a trust in which a labor organization is interested, the president and treasurer of the labor organization must file a terminal financial report for the period from the beginning of the trust's fiscal year to the date of termination. A terminal financial report must be filed if the trust has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more trusts to form a new trust. Similarly, if a trust in which a labor organization previously was interested continues to exist, but the labor organization's interest terminates, the labor organization must file a terminal financial report for that trust.

The terminal financial report must be filed within 30 days after the date of termination to the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-1519
Washington, DC 20210-0001

To complete a terminal report on Form T-1, follow the instructions in Section VIII and, in addition:

- Enter the date the trust, or the labor organization's interest in the trust, ceased to exist in Item 2 after the word "Through."

- Select Item 3(c) indicating that the trust, or the labor organization's interest in the trust, ceased to exist during the reporting period and that this is the terminal Form T-1 for the trust from the labor organization.

- Enter "3(c)" in the Item Number column in Item 25 (Additional Information) and provide a detailed statement of the reason the trust, or the labor organization's interest in the trust, ceased to exist. If the trust ceased to exist, also report in Item 25 plans for the disposition of the trust's cash and other assets, if any. Provide the name and address of the person or organization that will retain the records of the terminated organization. If the trust merged with another trust, report that organization's name and address.

Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

If You Need Assistance

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA
Birmingham, AL
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Grand Rapids, MI
Guaynabo, PR
Honolulu, HI

Houston, TX
Kansas City, MO
Los Angeles, CA
Miami (Ft. Lauderdale), FL
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Newark (Iselin), NJ
Philadelphia, PA
Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Tampa, FL
Washington, DC

Consult the OLMS Web site listed below or local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest field office.

Copies of labor organization annual financial reports, labor organization officer and employee reports, employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at http://www.unionreports.gov. Copies of reports for the year 1999 and earlier can be ordered through the Web site.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations documents, is also available at:

http://www.olms.dol.gov

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Federal Register

Tuesday,
March 4, 2008

Part IV

The President

Executive Order 13462—President's Intelligence Advisory Board and Intelligence Oversight Board

Federal Register
Vol. 73, No. 43
Tuesday, March 4, 2008

Presidential Documents

Title 3—

The President

Executive Order 13462 of February 29, 2008

President's Intelligence Advisory Board and Intelligence Oversight Board

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy*. It is the policy of the United States to ensure that the President and other officers of the United States with responsibility for the security of the Nation and the advancement of its interests have access to accurate, insightful, objective, and timely information concerning the capabilities, intentions, and activities of foreign powers.

Sec. 2. *Definitions*. As used in this order:

(a) ''department concerned'' means an executive department listed in section 101 of title 5, United States Code, that contains an organization listed in or designated pursuant to section 3(4) of the National Security Act of 1947, as amended (50 U.S.C. 401a(4));

(b) ''intelligence activities'' has the meaning specified in section 3.4 of Executive Order 12333 of December 4, 1981, as amended; and

(c) ''intelligence community'' means the organizations listed in or designated pursuant to section 3(4) of the National Security Act of 1947, as amended.

Sec. 3. *Establishment of the President's Intelligence Advisory Board*. (a) There is hereby established, within the Executive Office of the President and exclusively to advise and assist the President as set forth in this order, the President's Intelligence Advisory Board (PIAB).

(b) The PIAB shall consist of not more than 16 members appointed by the President from among individuals who are not employed by the Federal Government.

(c) The President shall designate a Chair from among the members of the PIAB, who shall convene and preside at meetings of the PIAB, determine its agenda, and direct its work.

(d) Members of the PIAB and the Intelligence Oversight Board (IOB) established in section 5 of this order:

(i) shall serve without any compensation for their work on the PIAB or the IOB; and

(ii) while engaged in the work of the PIAB or the IOB, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government (5 U.S.C. 5701–5707).

(e) The PIAB shall utilize such full-time professional and administrative staff as authorized by the Chair and approved by the President or the President's designee. Such staff shall be supervised by an Executive Director of the PIAB, appointed by the President, whom the President may designate to serve also as the Executive Director of the IOB.

Sec. 4. *Functions of the PIAB*. Consistent with the policy set forth in section 1 of this order, the PIAB shall have the authority to, as the PIAB determines appropriate, or shall, when directed by the President:

(a) assess the quality, quantity, and adequacy of intelligence collection, of analysis and estimates, and of counterintelligence and other intelligence activities, assess the adequacy of management, personnel and organization in the intelligence community, and review the performance of all agencies of the Federal Government that are engaged in the collection, evaluation, or production of intelligence or the execution of intelligence policy and report the results of such assessments or reviews:

(i) to the President, as necessary but not less than twice each year; and

(ii) to the Director of National Intelligence (DNI) and the heads of departments concerned when the PIAB determines appropriate; and

(b) consider and make appropriate recommendations to the President, the DNI, or the head of the department concerned with respect to matters identified to the PIAB by the DNI or the head of a department concerned.

Sec. 5. *Establishment of Intelligence Oversight Board.*

(a) There is hereby established a committee of the PIAB to be known as the Intelligence Oversight Board.

(b) The IOB shall consist of not more than five members of the PIAB who are designated by the President from among members of the PIAB to serve on the IOB. The IOB shall utilize such full-time professional and administrative staff as authorized by the Chair and approved by the President or the President's designee. Such staff shall be supervised by an Executive Director of the IOB, appointed by the President, whom the President may designate to serve also as the Executive Director of the PIAB.

(c) The President shall designate a Chair from among the members of the IOB, who shall convene and preside at meetings of the IOB, determine its agenda, and direct its work.

Sec. 6. *Functions of the IOB.* Consistent with the policy set forth in section 1 of this order, the IOB shall:

(a) issue criteria on the thresholds for reporting matters to the IOB, to the extent consistent with section 1.7(d) of Executive Order 12333 or the corresponding provision of any successor order;

(b) inform the President of intelligence activities that the IOB believes:

(i)(A) may be unlawful or contrary to Executive Order or presidential directive; and

(B) are not being adequately addressed by the Attorney General, the DNI, or the head of the department concerned; or

(ii) should be immediately reported to the President.

(c) review and assess the effectiveness, efficiency, and sufficiency of the processes by which the DNI and the heads of departments concerned perform their respective functions under this order and report thereon as necessary, together with any recommendations, to the President and, as appropriate, the DNI and the head of the department concerned;

(d) receive and review information submitted by the DNI under subsection 7(c) of this order and make recommendations thereon, including for any needed corrective action, with respect to such information, and the intelligence activities to which the information relates, as necessary, but not less than twice each year, to the President, the DNI, and the head of the department concerned; and

(e) conduct, or request that the DNI or the head of the department concerned, as appropriate, carry out and report to the IOB the results of, investigations of intelligence activities that the IOB determines are necessary to enable the IOB to carry out its functions under this order.

Sec. 7. *Functions of the Director of National Intelligence.* Consistent with the policy set forth in section 1 of this order, the DNI shall:

(a) with respect to guidelines applicable to organizations within the intelligence community that concern reporting of intelligence activities described in subsection 6(b)(i)(A) of this order:

(i) review and ensure that such guidelines are consistent with section 1.7(d) of Executive Order 12333, or a corresponding provision of any successor order, and this order; and

(ii) issue for incorporation in such guidelines instructions relating to the format and schedule of such reporting as necessary to implement this order;

(b) with respect to intelligence activities described in subsection 6(b)(i)(A) of this order:

(i) receive reports submitted to the IOB pursuant to section 1.7(d) of Executive Order 12333, or a corresponding provision of any successor order;

(ii) forward to the Attorney General information in such reports relating to such intelligence activities to the extent that such activities involve possible violations of Federal criminal laws or implicate the authority of the Attorney General unless the DNI or the head of the department concerned has previously provided such information to the Attorney General; and

(iii) monitor the intelligence community to ensure that the head of the department concerned has directed needed corrective actions and that such actions have been taken and report to the IOB and the head of the department concerned, and as appropriate the President, when such actions have not been timely taken; and

(c) submit to the IOB as necessary and no less than twice each year:

(i) an analysis of the reports received under subsection (b)(i) of this section, including an assessment of the gravity, frequency, trends, and patterns of occurrences of intelligence activities described in subsection 6(b)(i)(A) of this order;

(ii) a summary of direction under subsection (b)(iii) of this section and any related recommendations; and

(iii) an assessment of the effectiveness of corrective action taken by the DNI or the head of the department concerned with respect to intelligence activities described in subsection 6(b)(i)(A) of this order.

Sec. 8. *Functions of Heads of Departments Concerned and Additional Functions of the Director of National Intelligence.*

(a) To the extent permitted by law, the DNI and the heads of departments concerned shall provide such information and assistance as the PIAB and the IOB may need to perform functions under this order.

(b) The heads of departments concerned shall:

(i) ensure that the DNI receives:

(A) copies of reports submitted to the IOB pursuant to section 1.7(d) of Executive Order 12333, or a corresponding provision of any successor order; and

(B) such information and assistance as the DNI may need to perform functions under this order; and

(ii) designate the offices within their respective organizations that shall submit reports to the IOB required by Executive Order and inform the DNI and the IOB of such designations; and

(iii) ensure that departments concerned comply with instructions issued by the DNI under subsection 7(a)(ii) of this order.

(c) The head of a department concerned who does not implement a recommendation to that head of department from the PIAB under subsection 4(b) of this order or from the IOB under subsections 6(c) or 6(d) of this order shall promptly report through the DNI to the Board that made the recommendation, or to the President, the reasons for not implementing the recommendation.

(d) The DNI shall ensure that the Director of the Central Intelligence Agency performs the functions with respect to the Central Intelligence Agency under this order that a head of a department concerned performs with respect to organizations within the intelligence community that are part of that department.

Sec. 9. *References and Transition.* (a) References in Executive Orders other than this order, or in any other presidential guidance, to the ''President's Foreign Intelligence Advisory Board'' shall be deemed to be references to the President's Intelligence Advisory Board established by this order.

(b) Individuals who are members of the President's Foreign Intelligence Advisory Board under Executive Order 12863 of September 13, 1993, as amended, immediately prior to the signing of this order shall be members of the President's Intelligence Advisory Board immediately upon the signing of this order, to serve as such consistent with this order until the date that is 15 months following the date of this order.

(c) Individuals who are members of the Intelligence Oversight Board under Executive Order 12863 immediately prior to the signing of this order shall be members of the Intelligence Oversight Board under this order, to serve as such consistent with this order until the date that is 15 months following the date of this order.

(d) The individual serving as Executive Director of the President's Foreign Intelligence Advisory Board immediately prior to the signing of this order shall serve as the Executive Director of the PIAB until such person resigns, dies, or is removed, or upon appointment of a successor under this order and shall serve as the Executive Director of the IOB until an Executive Director of the IOB is appointed or designated under this order.

Sec. 10. *Revocation.* Executive Order 12863 is revoked.

Sec. 11. *General Provisions.*

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) Any person who is a member of the PIAB or IOB, or who is granted access to classified national security information in relation to the activities of the PIAB or the IOB, as a condition of access to such information, shall sign and comply with the agreements to protect such information from unauthorized disclosure. This order shall be implemented in a manner consistent with Executive Order 12958 of April 17, 1995, as amended, and Executive Order 12968 of August 2, 1995, as amended.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
February 29, 2008.

[FR Doc. 08–970
Filed 3–3–08; 11:35 am]
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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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 ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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To provide for the continued minting and issuance of certain $1 coins in 2008. (Feb. 29, 2008; 122 Stat. 648)

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