AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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Federal Register

6–16–08 Monday
Vol. 73 No. 116 June 16, 2008

Pages 33875–34174

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9:00 a.m.–Noon

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Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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

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

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1003

[EOIR Docket No. 158F; AG Order No. 2975–2008]

RIN 1125–AA57

Board of Immigration Appeals: Composition of Board and Temporary Board Members

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts without change an interim rule with request for comments published in the **Federal Register** on December 7, 2006. The interim rule amended the Executive Office for Immigration Review (EOIR) regulations relating to the organization of the Board of Immigration Appeals (Board) by adding four Board member positions, thereby expanding the Board to 15 members. This rule also expanded the list of persons eligible to serve as temporary Board members to include senior EOIR attorneys with at least ten years of experience in the field of immigration law.

DATES: *Effective date:* This rule is effective June 16, 2008.

FOR FURTHER INFORMATION CONTACT: John Blum, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041; telephone (703) 305–0470 (not a toll free call).

SUPPLEMENTARY INFORMATION: On December 7, 2006, the Department published an interim rule with request for comments amending 8 CFR 1003.1. Board of Immigration Appeals: Composition of Board and Temporary Board Members, 71 FR 70855. As explained in the interim rule, following a comprehensive review of the Immigration Courts and the Board, the Attorney General announced a series of measures be taken to improve adjudications by the immigration judges and the Board. Increasing the number of Board members was one of the measures the Attorney General directed the Director of EOIR to implement. Accordingly, the interim rule increased the Board from 11 to 15 members.

The interim rule also amended the Director's temporary appointment authority by creating an additional category of people eligible to serve as temporary Board members. The amendment allows the Director, with the approval of the Deputy Attorney General, to designate senior EOIR attorneys with at least ten years of experience in the field of immigration law.

The Department provided an opportunity for post-promulgation comment even though this is a rule of internal agency organization. Written comments were required on or before February 5, 2007. One comment was received. However, the comment does not relate to the issues set forth in the interim rule. Instead, it expresses an opinion about an increase in fees ''to be charged immigrants who wish to change their status, or begin the process of applying for citizenship in our country.'' Because this comment does not address the changes set forth in the interim rule, it has not been considered. Accordingly, the interim rule amending 8 CFR part 1003 that was published at 71 FR 70855 on December 7, 2006, is adopted as a final rule without change.

Regulatory Requirements

A. Administrative Procedure Act

Compliance with requirements in 5 U.S.C. 553 with regard to notice of proposed rulemaking and delayed effective date is unnecessary as this rule addresses only internal agency organization and management. Accordingly, it is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)), and the reporting requirement of 5 U.S.C. 801 does not apply.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that an agency conduct an RFA analysis when an agency is ''required by section 553 * * *, or any other law, to publish general notice of proposed rulemaking for any proposed rule.'' 5 U.S.C. 603(a). RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). This rule is exempt from notice and comment rulemaking. Therefore, no RFA analysis under 5 U.S.C. 603 is required for this rule.

C. Unfunded Mandates Reform Act of 1995

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

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866 (Regulatory Planning and Review)

The Department does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review.

F. Executive Order 13132 (Federalism)

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have

sufficient federalism implications to warrant preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule has been prepared in accordance with the standards in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

This rule does not create any information collection requirement.

List of Subjects in 8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

8 CFR Chapter V

■ Accordingly, for the reasons stated in the interim rule published at 71 FR 70855 on December 7, 2006, the amendments set forth in the interim rule are adopted as final without change.

Dated: June 5, 2008.

Michael B. Mukasey,

Attorney General.

[FR Doc. E8–13436 Filed 6–13–08; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No.: FAA–2006–25414; Amendment No. 27–44]

RIN 2120–AH87

Performance and Handling Qualities Requirements for Rotorcraft; Correcting Amendment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment.

SUMMARY: The FAA is correcting a previously published final rule entitled Performance and Handling Qualities Requirements for Rotorcraft. In that final rule, we inadvertently left two cited references unchanged. The intent of this action is to correct the error in the regulation to ensure the requirement is clear and accurate.

DATES: Effective June 16, 2008.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule contact Jeff Trang, Rotorcraft Standards Staff, ASW–111, Federal Aviation Administration, Fort Worth, Texas 76193–0111; telephone (817) 222–5135; facsimile (817) 222–5961, e-mail *jeff.trang@faa.gov*. For legal questions concerning this final rule contact Steve Harold, Directorate Counsel, ASW–7G, Federal Aviation Administration, Fort Worth, Texas 76193–0007, telephone (817) 222–5099; facsimile (817) 222–5945, e-mail *steve.c.harold@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On February 29, 2008, the FAA published a final rule (73 FR 10987) that provided new and revised airworthiness standards for normal and transport category rotorcraft. The amendment re-designated § 27.79, as new § 27.87. However, in § 27.25(a)(1)(iv) and § 27.1587(a), we inadvertently made references to § 27.79 instead of § 27.87 as intended. This document makes the correction to reflect § 27.87 as the intended reference. This correction will not impose any additional requirements.

List of Subjects in 14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

■ Accordingly, 14 CFR part 27 is corrected as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

■ 2. Amend § 27.25 by revising paragraph (a)(1)(iv) to read as follows:

§ 27.25 Weight limits.

(a) * * *

(1) * * *

(iv) The highest weight in which the provisions of §§ 27.87 or 27.143(c)(1), or combinations thereof, are demonstrated if the weights and operating conditions (altitude and temperature) prescribed by those requirements cannot be met; and

* * * * *

■ 3. Amend § 27.1587 by revising the introductory text of paragraph (a) to read as follows:

§ 27.1587 Performance information.

(a) The Rotorcraft Flight Manual must contain the following information, determined in accordance with §§ 27.49 through 27.87 and 27.143(c) and (d):

* * * * *

Issued in Washington, DC, on June 11, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E8–13524 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0630; Directorate Identifier 2008–SW–19–AD; Amendment 39–15554; AD 2008–12–11]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E, A109S, and A119 Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Agusta S.p.A. Model A109E, A109S, and A119 helicopters. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority to identify and correct an unsafe condition on an aviation product. The European Aviation Safety Agency (EASA), the technical agent for Italy, with which we have a bilateral agreement, states in the MCAI:

> During a ground test of the emergency door release system, the Pilot doors failed to disengage. Investigation determined that the reason of this malfunction is interference between the lower hinge and the fuselage structure. This condition, if not corrected, creates the risk of non-disengagement of the Pilot- and/or Co-pilot doors during an emergency, inhibiting the evacuation of the aircraft, possibly resulting in injuries to the occupants.

This AD requires actions that are intended to address the unsafe condition caused by interference between the pilot or co-pilot door lower hinge and the fuselage structure.

DATES: This AD becomes effective on July 1, 2008.

The Director of the Federal Register approved the incorporation by reference of Agusta Alert Bollettino Tecnico No. 109EP–83, No. 109S–18, and No. 119–25, all dated November 29, 2007, as of July 1, 2008.

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

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595.

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

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

The European Aviation Safety Agency (EASA), which is the technical agent for the Member States of the European Community, has issued an MCAI in the form of EASA Airworthiness Directive No. 2007–0295R1–E, dated December 4, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for these Italian-certificated helicopters. The MCAI states:

> ''During a ground test of the emergency door release system, the Pilot doors failed to disengage. Investigation determined that the reason of this malfunction is interference between the lower hinge and the fuselage structure. This condition, if not corrected, creates the risk of non-disengagement of the Pilot- and/or Co-pilot doors during an emergency, inhibiting the evacuation of the aircraft, possibly resulting in injuries to the occupants.''

This AD requires actions that are intended to address the unsafe condition caused by interference between the pilot or co-pilot door lower hinge and the fuselage structure. You may obtain further information by examining the MCAI and service information in the AD docket.

Relevant Service Information

Agusta has issued Alert Bollettino Tecnico No. 109EP–83, No. 109S–18, and No. 119–25, all dated November 29, 2007. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of Italy, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, we have been notified of the unsafe condition described in the MCAI and the service information. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI

We have reviewed the MCAI and related service information and, in general, agree with their substance. However, we have made the following changes:

• The compliance times in this AD are stated in terms of hours time-in-service rather than calendar dates, as stated in the MCAI.

• This AD is not applicable to the Model A109LUH helicopters because they are not type certificated in the United States.

In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information. These differences are highlighted in the ''Differences Between the FAA AD and the MCAI'' section in the AD.

Cost of Compliance

We estimate that this AD will affect 140 helicopters of U.S. registry and that it will take about 1 work-hour to inspect both doors and 2 work-hours to re-work both doors, if necessary, per helicopter. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $33,600, assuming all 140 helicopters are inspected and require rework of both doors.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because inspecting for interference between the pilot and co-pilot door lower hinge and the fuselage structure is required within 5 hours time-in-service, and, if there is no interference, rework is required within 100 hours time-in-service (which equates to approximately 2 months of operations), both very short compliance times, and if interference is found, corrective action is required before further flight. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0630; Directorate Identifier 2008–SW–19–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any

personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

We 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 an economic evaluation of the estimated costs to comply with this AD and placed it 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:

2008–12–11 Agusta S.p.A.: Amendment 39–15554. Docket No. FAA–2008–0630; Directorate Identifier 2008–SW–19–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on July 1, 2008.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model A109E, A109S, and A119 helicopters, certificated in any category.

Reason

(d) The mandatory continued airworthiness information (MCAI) states:

During a ground test of the emergency door release system, the Pilot doors failed to disengage. Investigation determined that the reason of this malfunction is interference between the lower hinge and the fuselage structure. This condition, if not corrected, creates the risk of non-disengagement of the Pilot- and/or Co-pilot doors during an emergency, inhibiting the evacuation of the aircraft, possibly resulting in injuries to the occupants.

Actions and Compliance

(e) Within the next 5 hours time-in-service (TIS), unless already done, do the following actions.

(1) Inspect the Pilot & Co-pilot Doors emergency release system in accordance with the Compliance Instructions, Part I, steps 2 through 5, of Agusta Alert Bollettino Tecnico (BT) No. 109EP–83, dated November 29, 2007, (BT 109E) for Model A109E helicopters; BT No. 109S–18, dated November 29, 2007, (BT 109S) for Model A109S helicopters; or BT No. 119–25, dated November 29, 2007, (BT119) for Model A119 helicopters, as appropriate for your model helicopter.

(i) If any interference is found between the lower hinge and the housing on the helicopter structure, before further flight, rework the housing slot of the lower hinge in accordance with the Compliance Instructions, Part II, of either BT 109E, BT 109S, or BT 119, as appropriate for your model helicopter.

(ii) If no interference is found between the lower hinge and the housing on the helicopter structure, rework the housing slot of the lower hinge within the next 100 hours TIS in accordance with the Compliance Instructions, Part II, steps 2 through 11, of either BT 109E, BT 109S, or BT 119, as appropriate for your model helicopter.

Differences Between the FAA AD and the MCAI

(f) The compliance times in this AD are stated in terms of hours TIS rather than calendar dates, as stated in the MCAI. Also, this AD is not applicable to the Model A109LUH helicopters because they are not type certificated in the United States.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Safety Management Group, Rotorcraft 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: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

(2) *Airworthy Product:* Use only FAA-approved corrective actions. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent) if the State of Design has an appropriate bilateral agreement with the United States. 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) Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive No. 2007–0295R1–E, dated December 4, 2007, contains related information.

Subject

(i) Air Transport Association of America (ATA) Code JASC 5210, Passenger/Crew Doors.

Material Incorporated by Reference

(j) You must use the specified portions of the service information specified in Table 1 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 Agusta S.p.A., 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595.

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Agusta Alert Bollettino Tecnico	Date
No. 109EP–83, No. 109S–18, and No. 119–25.	November 29, 2007.

Issued in Fort Worth, Texas, on June 3, 2008.

Judy I. Carl,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–13381 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. FAA–2002–6717, Amendment No. 121–339, 135–115]

RIN 2120–AJ26

Extended Operations (ETOPS) of Multi-Engine Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; immediately adopted.

SUMMARY: The Federal Aviation Administration is amending its regulations governing extended range operations of turbine powered multi-engine airplanes operated by air carriers and in commuter and on-demand passenger carrying operations. This action clarifies the qualifications of individuals who certify by signature the ETOPS pre-departure service check for ETOPS flights.

This change follows current FAA guidance and clarifies the regulations for the affected public.

DATES: This action is effective June 16, 2008.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this final rule contact Jim Ryan, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–7493; facsimile (202) 267–5229; e-mail *Jim.Ryan@faa.gov*. For legal information, contact Bruce Glendening, Office of the Chief Counsel, Division of Regulations, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591; telephone (202) 267–3073; facsimile (202) 267–7971; e-mail *Bruce.Glendening@faa.gov*.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

This rulemaking is promulgated under the authority described in 49 U.S.C. 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.

Background

The ETOPS final rule, Extended Operations (ETOPS) of Multi-Engine Airplanes, published in the **Federal Register** on January 16, 2007, (72 FR 1808) applies to part 121 and part 135 turbine powered multi-engine airplanes used in passenger-carrying, extended-range operations. All cargo operations in airplanes with more than two engines of both part 121 and part 135 were exempted from the majority of this rule. The rule established regulations governing the design, operation, and maintenance of certain airplanes operated on flights involving long distances from an adequate airport. It codified current FAA policy, industry best practices and recommendations, and international standards designed to ensure long range flights will continue to operate safely. To ease the transition for current operators, the rule included delayed compliance dates for certain ETOPS requirements. However, as written, the final rule language does not accurately reflect the intent of the FAA to have a qualified mechanic perform the ETOPS pre-departure service check (PDSC) even though this intent is clearly stated in the preamble.

The regulatory evaluation, found in the docket of the final rule (Docket No. 2002–6717), further substantiates the FAA's intent by using the hourly wage rate of an aircraft mechanic as the basis for establishing the cost of this requirement.

Good Cause Justification for Immediate Final Rule Adoption

We find that notice and public comment under 5 U.S.C. 553(b) is impracticable because part 121 regulation, as currently written, would clearly require the use of mechanics with airframe and powerplant ratings to be the only people who could certify by signature the ETOPS pre-departure service check for ETOPS flights, even for flights outside of the United States. As written, an operator would be required to comply with an almost impossible requirement to have mechanics with an airframe and powerplant rating, issued by the FAA, positioned at numerous maintenance facilities outside of the United States. As literally written in the final rule, this requirement is overly burdensome and was not (1) The intent of the FAA, (2) contained in any previous FAA guidance, and (3) contained in the notice of proposed rulemaking for this rule.

We find that notice and public comment under 5 U.S.C. 553(b) is unnecessary for the amendment to part 135 regulations because this intent is clearly stated in the preamble to the final rule. In response to the comment ''that the check required immediately before a flight and certified by an ETOPS qualified maintenance person is unrealistic for part 135 operators who do not fly ETOPS routes on a regular basis'', the FAA responded, ''The FAA disagrees that a predeparture service check is unrealistic for 135 operators. Part 135 operators are already required to have procedures in place to ensure that maintenance is performed by properly qualified maintenance personnel. Allowing a pilot to perform a PDSC degrades the importance of the check and places a safety critical task below the level of performance required to change a tire or replace a light bulb for reading'' (72 FR 1858, January 16, 2007).

Discussion of the Final Rule

Clarification of Who May Certify by Signature That the ETOPS Pre-Departure Service Check (PDSC) Has Been Completed

Following publication of the ETOPS final rule, the FAA learned that the qualification requirements for mechanics certifying by signature the completion of the ETOPS PDSC did not codify existing FAA ETOPS guidance for part 121 operators. Since 1998, FAA Advisory Circular (AC) 120–42A, Extended Range Operation with Two-Engine Airplanes (applicable to part 121 operators) has stated, ''This check should be accomplished and signed off by an ETOPS qualified maintenance person, immediately prior to an ETOPS flight.''

In the United States, this person is typically a certificated mechanic with an airframe and powerplant rating who received adequate airplane and engine specific training, as well as ETOPS specific training focused on the special nature of ETOPS flights. Outside of the United States, however, it is extremely difficult for an operator to ensure that a

certificated mechanic with an airframe and powerplant rating performs the pre-departure service check. In many cases, these maintenance technicians do not possess U.S. Mechanic's Certificates with Airframe and Powerplant Ratings. Instead, they have their country's Civil Aviation Authority's equivalent to an airframe and powerplant rating. The FAA does not officially recognize maintenance technicians' certificates from other countries except in the case of the Canadian equivalent to the U.S. Airframe and Powerplant Certificate (14 CFR 43.17).

In order for U.S. ETOPS operators to function overseas, the FAA consistently allowed part 121 operators to establish alternative qualification criterion to ensure an equivalent level of safety for maintenance technicians who conduct pre-departure service checks for ETOPS flights. Outside the U.S., the FAA always allowed the pre-departure service check for ETOPS flights for part 121 operators to be accomplished and signed off by trained maintenance personnel who work for a repair station or another part 121 operator.

The final rule did not accurately convey the FAA's intent to codify current practice and apply it to both part 121 and part 135 operators. This rule clarifies FAA's intent and corrects the regulatory language in §§ 121.374(b)(3) and Appendix G to Part 135, section G135.2.8(b)(3) and new (b)(4).

Continuous Airworthiness Maintenance Program (CAMP) for Two-Engine ETOPS in Part 121

The language in current § 121.374(b)(3), as written, requires the use of mechanics with airframe and powerplant ratings to be the only people who can certify by signature the ETOPS pre-departure service check for ETOPS flights, including flights outside the United States. As written, an operator is required to comply with an almost impossible requirement to have mechanics with an airframe and powerplant rating, issued by the FAA, positioned at numerous maintenance facilities outside of the United States. This requirement is (1) overly burdensome, (2) not the intent of the FAA, and (3) contrary to FAA guidance. The FAA has reconsidered the applicability of this rule in consideration of existing guidance and determined that this requirement must be consistent with existing guidance and practice.

ETOPS Pre-Departure Service Check (PDSC) in Part 135

The language in current Appendix G to Part 135, section G135.2.8(b)(3), does not accurately reflect the intent of the FAA to have a qualified maintenance person perform the ETOPS PDSC.

The intent is clearly stated in the preamble of the final rule (72 FR 1808, January 16, 2007). In response to the public comment "* * * that the check required immediately before a flight and certified by an ETOPS qualified maintenance person is unrealistic for part 135 operators who do not fly ETOPS routes on a regular basis", the FAA responded, "The FAA disagrees that a pre-departure service check is unrealistic for part 135 operators."

Paperwork Reduction Act

There are no new requirements for information collection associated with these amendments.

The FAA included a detailed discussion of the new information collection requirements of the proposed rule at 68 FR 64782, November 14, 2003. No comments were received on these estimated requirements.

International Compatibility

In keeping with U.S. obligations under the convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect, and the basis for it, be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

Since this final rule merely clarifies FAA regulations covering ETOPS flights, the expected outcome will be a minimal impact with positive net benefits and a regulatory evaluation was not prepared.

FAA has, therefore, determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and explain the rationale for their actions to assure such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule merely clarifies FAA regulations covering ETOPS flights. The expected outcome will have minimal impact on any small entity affected by this rulemaking action.

Therefore, as the Acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–039) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The requirements imposed on both domestic and foreign operators create no obstacles to the foreign commerce of the United States. Thus, complies with the Trade Agreements Act of 1979.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by:

(1) Searching the Federal eRulemaking Portal at *http://www.regulations.gov*;

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official or the person listed under **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects

14 CFR Part 121

Aircraft, Aviation Safety.

14 CFR Part 135

Aircraft, Airmen, Aviation Safety.

The Amendment

■ For the reasons discussed in the preamble, the Federal Aviation Administration amends Title 14, parts 121 and 135 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 2. Amend § 121.374 by revising paragraph (b)(3) and adding paragraph (b)(4) to read as follows:

§ 121.374 Continuous airworthiness maintenance program (CAMP) for two-engine ETOPS.

* * * * *

(b) * * *

(3) An appropriately trained maintenance person, who is ETOPS qualified, must accomplish and certify by signature ETOPS specific tasks. Before an ETOPS flight may commence, an ETOPS pre-departure service check (PDSC) Signatory Person, who has been authorized by the certificate holder, must certify by signature, that the ETOPS PDSC has been completed.

(4) For the purposes of this paragraph (b) only, the following definitions apply:

(i) ETOPS qualified person: A person is ETOPS qualified when that person satisfactorily completes the operator's ETOPS training program and is authorized by the certificate holder.

(ii) ETOPS PDSC Signatory Person: A person is an ETOPS PDSC Signatory Person when that person is ETOPS qualified and that person:

(A) When certifying the completion of the ETOPS PDSC in the United States:

(*1*) Works for an operator authorized to engage in part 121 operation or works for a part 145 repair station; and

(*2*) Holds a U.S. Mechanic's Certificate with airframe and powerplant ratings.

(B) When certifying the completion of the ETOPS PDSC outside of the U.S. holds a certificate in accordance with § 43.17(c)(1) of this chapter; or

(C) When certifying the completion of the ETOPS PDSC outside the U.S. holds the certificates needed or has the requisite experience or training to return aircraft to service on behalf of an ETOPS maintenance entity.

(iii) ETOPS maintenance entity: An entity authorized to perform ETOPS maintenance and complete ETOPS PDSC and that entity is:

(A) Certificated to engage in part 121 operations;

(B) Repair station certificated under part 145 of this chapter; or

(C) Entity authorized pursuant to § 43.17(c)(2) of this chapter.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATION AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 4. Amend Appendix G to Part 135 by revising section G135.2.8(b)(3) and adding paragraph G135.2.8(b)(4) to read as follows:

Appendix G to Part 135—Extended (ETOPS)

* * * * *

G135.2.8 Maintenance Program Requirements. * * *

* * * * *

(b) * * *

(3) An appropriately trained maintenance person, who is ETOPS qualified must accomplish and certify by signature ETOPS specific tasks. Before an ETOPS flight may commence, an ETOPS pre-departure service check (PDSC) Signatory Person, who has been authorized by the certificate holder, must certify by signature, that the ETOPS PDSC has been completed.

(4) For the purposes of this paragraph (b) only, the following definitions apply:

(i) ETOPS qualified person: A person is ETOPS qualified when that person satisfactorily completes the operator's ETOPS training program and is authorized by the certificate holder.

(ii) ETOPS PDSC Signatory Person: A person is an ETOPS PDSC Signatory Person when that person is ETOPS Qualified and that person:

(A) When certifying the completion of the ETOPS PDSC in the United States:

(*1*) Works for an operator authorized to engage in part 135 or 121 operation or works for a part 145 repair station; and

(*2*) Holds a U.S. Mechanic's Certificate with airframe and powerplant ratings.

(B) When certifying the completion of the ETOPS PDSC outside of the U.S. holds a certificate in accordance with § 43.17(c)(1) of this chapter; or

(C) When certifying the completion of the ETOPS PDSC outside the U.S. holds the certificates needed or has the requisite experience or training to return aircraft to service on behalf of an ETOPS maintenance entity.

(iii) ETOPS maintenance entity: An entity authorized to perform ETOPS maintenance and complete ETOPS pre-departure service checks and that entity is:

(A) Certificated to engage in part 135 or 121 operations;

(B) Repair station certificated under part 145 of this title; or

(C) Entity authorized pursuant to § 43.17(c)(2) of this chapter.

* * * * *

Issued in Washington, DC on June 9, 2008.

Robert A. Sturgell,

Acting Administrator.

[FR Doc. E8–13479 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 772 and 774

[Docket No. 080208146–8148–01]

RIN 0694–AE23

Revisions to the Export Administration Regulations Based on the 2007 Missile Technology Control Regime Plenary Agreements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the November 2007 Plenary in Athens, Greece.

DATES: *Effective Date:* This rule is effective: June 16, 2008. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE23, by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include ''RIN 0694–AE23'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE23.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694–AE23)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Dennis L. Krepp, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Telephone: (202) 482–1309.

SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR) is an export control arrangement among 34 nations, including most of the world's advanced suppliers of ballistic missiles and missile-related materials and equipment. The regime establishes a common export control policy based on a list of controlled items (the Annex) and on guidelines (the Guidelines) that member countries implement in accordance with their national export controls. The goal of maintaining the Annex and the Guidelines is to stem the flow of missile systems capable of delivering weapons of mass destruction to the global marketplace.

While the MTCR was originally created to prevent the spread of missiles capable of carrying a nuclear warhead, it was expanded in January 1993 to also stem the flow of delivery systems for chemical and biological weapons. MTCR members voluntarily pledge to adopt the regime's export Guidelines and to restrict the export of items contained in the regime's Annex. The implementation of the regime's Guidelines is effectuated through the national export control laws and policies of the regime members.

Amendments to the Export Administration Regulations

This final rule revises the Export Administration Regulations (EAR) to reflect changes to the MTCR Annex agreed to at the November 2007 Plenary in Athens, Greece. Specifically, in section 772.1 (Definitions of Terms as Used in the Export Administration Regulations), this rule amends the technical notes to the definition of the term ''payload'' to include munitions supporting structures and deployment mechanisms under paragraphs (e)(5) and (e)(7) (MTCR Annex Change Definitions: ''Payload'' Technical Notes 5.e and 5.g). This will clarify under the paragraph (e) technical notes to the definition of ''payload'' that payload for ''other UAVs'' (Unmanned Aerial Vehicles) includes munitions supporting structures and deployment mechanisms.

In addition, this rule amends the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) to reflect changes to the MTCR Annex. Specifically, the following Export Control Classification Numbers (ECCNs) are affected:

ECCN 1C111 paragraph (b) is amended by adding additional text to clarify the scope of materials controlled in this entry (MTCR Annex Change Category II: Item 4.C.5). Specifically, paragraph b.1 is amended to state that carboxy-terminated polybutadiene includes carboxyl-terminated polybutadiene. Similarly, paragraph b.2 is amended to state that hydroxy-terminated polybutadiene includes hydroxyl-terminated polybutadiene. BIS expects this change to have a minimal impact on license applications.

ECCN 1C116 is amended by adding text to the heading to clarify the scope of the entry (MTCR Annex Change Category II: Item 6.C.8). This change is made to clarify that maraging steels are iron alloys generally characterized by high nickel, very low carbon content, and the use of substitutional elements or precipitates to produce strengthening and age-hardening of the alloy. BIS expects this change to have a minimal impact on license applications.

ECCN 2B116 paragraph (a) is amended by removing the word ''and'' and replacing it with ''while'' to clarify the scope of the vibration test modes controlled under this paragraph (MTCR Annex Change Category II: Item 15.B.1.a). BIS expects this change to have no impact on license applications.

ECCN 9B106 is amended by modifying the heading to read ''Environmental chambers usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km and their subsystems, as follows (see List of Items Controlled)''. This change makes it clear that this ECCN controls these types of environmental chambers useable for these types of systems and their subsystems. Paragraph (a) of this ECCN is amended by removing paragraph a.1, redesignating paragraph a.2 as a new paragraph a.1, and inserting a new paragraph a.2 that includes a new control parameter. The new control parameter in paragraph a.2 specifies that environmental chambers controlled by this ECCN include those incorporating, or designed or modified to incorporate, a shaker unit or other vibration test equipment that produce vibration environments equal to or greater than 10 g rms, measured 'bare table', between 20 Hz and 2 kHz imparting forces equal to or greater than 5 kN (MTCR Annex Change Category II: Item 15.B.4).

In addition, paragraph (a) of ECCN 9B106 is amended by adding a technical note to clarify the control text and to include controls on environmental chambers that are capable of incorporating shaker units or vibration test equipment, even if the shaker units or vibration test equipment are not included at the time of export (MTCR Annex Change Category II: Item 15.B.4). This change is being made to the EAR to address a missile proliferation concern of the MTCR members with regard to this type of equipment and its usefulness in MTCR type systems (e.g., missile delivery systems). Prior to this change, environmental chambers that were capable of incorporating shaker units or vibration test equipment could be exported without being subject to an MT control when the chambers were exported separately from the shaker units or vibration test equipment controlled under this ECCN. In addition, prior to this change, shaker units or vibration test equipment, when exported separately from the environmental chambers controlled under this ECCN, could be exported without being subject to an MT control. BIS expects this amendment to the EAR to cause a slight increase in license applications.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on June 16, 2008, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before *July 16, 2008*. Any such items not actually exported or reexported before midnight, on *July 16, 2008*, require a license in accordance with this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 15, 2007, 72 FR 46137 (August 16, 2007), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 772 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 772—[AMENDED]

■ 1. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 2. Section 772.1 is amended by revising paragraph (e) of the Technical Notes to the definition of ''payload'', as set forth below:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

''*Payload*''. (*MTCR context*).

* * * * *

e. Other UAVs—''Payload'' includes:

1. Munitions of any type (e.g., explosive or non-explosive);

2. Mechanisms and devices for safing, arming, fuzing or firing;

3. Countermeasures equipment (e.g., decoys, jammers or chaff dispensers) that can be removed without violating the structural integrity of the vehicle;

4. Signature alteration equipment that can be removed without violating the structural integrity of the vehicle;

5. Equipment required for a mission such as data gathering, recording or transmitting devices for mission-specific data and supporting structures that can be removed without violating the structural integrity of the vehicle;

6. Recovery equipment (e.g., parachutes) that can be removed without violating the structural integrity of the vehicle;

7. Munitions supporting structures and deployment mechanisms that can be removed without violating the structural integrity of the vehicle.

* * * * *

PART 774—[AMENDED]

■ 3. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1C111 is amended by revising paragraphs (b)(1) and (b)(2) of the ''items'' paragraph in the List of Items Controlled section, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1C111 Propellants and constituent chemicals for propellants, other than those specified in 1C011, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

* * * * *

b. Polymeric substances:

b.1. Carboxy—terminated polybutadiene (including carboxyl—terminated polybutadiene) (CTPB);

b.2. Hydroxy—terminated polybutadiene (including hydroxyl—terminated polybutadiene) (HTPB);

* * * * *

■ 5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1C116 is amended by revising the heading, to read as follows:

1C116 Maraging steels (iron alloys generally characterized by high nickel, very low carbon content and the use of substitutional elements or precipitates to produce strengthening and age-hardening of the alloy) having an ultimate tensile strength equal to or greater than 1.5 GPa, measured at 293 K (20 °C), in the form of sheet, plate or tubing with a wall or plate thickness equal to or less than 5 mm.

* * * * *

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B116 is amended by revising paragraph (a) of the ''items'' paragraph in the List of Items Controlled section, to read as follows:

2B116 Vibration test systems, equipment and components therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Vibration test systems employing feedback or closed loop techniques and incorporating a digital controller, capable of vibrating a system at an acceleration equal to or greater than 10 g rms between 20 Hz to 2,000 Hz while imparting forces equal to or greater than 50 kN (11,250 lbs.), measured 'bare table';

* * * * *

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B106 is amended:

■ a. By revising the heading; and

■ b. By revising paragraph (a) and the ''Technical Notes'' to paragraph (a) of the ''items'' paragraph in the List of Items Controlled section, to read as follows:

9B106 Environmental chambers usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km and their subsystems, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Environmental chambers capable of simulating all of the following flight conditions:

a.1. Having any of the following:

a.1.a. Altitude equal to or greater than 15,000 m; or

a.1.b. Temperature range of at least −50 °C to +125 °C; and

a.2. Incorporating, or designed or modified to incorporate, a shaker unit or other vibration test equipment to produce vibration environments equal to or greater than 10 g rms, measured 'bare table', between 20 Hz and 2 kHz imparting forces equal to or greater than 5 kN;

Technical Notes:

1. Item 9B106.a.2 describes systems that are capable of generating a vibration environment with a single wave (e.g., a sine wave) and systems capable of generating a broad band random vibration (i.e., power spectrum).

2. The term 'bare table' means a flat table, or surface, with no fixture or fittings.

3. In Item 9B106.a.2, designed or modified means the environmental chamber provides appropriate interfaces (e.g., sealing devices) to incorporate a shaker unit or other vibration test equipment as specified in this Item.

* * * * *

Dated: June 10, 2008.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E8–13468 Filed 6–13–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–114–FOR; OSM–2008–0010]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Interim rule with request for comments.

SUMMARY: We are approving, on an interim basis, an amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia revised its Surface Coal Mining and Reclamation Act to effect changes concerning the special reclamation tax and other issues. The tax provisions of the amendment are intended to increase and extend the special reclamation tax, and create the Special Reclamation Water Trust Fund for the purpose of designing, constructing and maintaining water treatment systems on forfeited sites.

We are approving the reinstatement of the seven cents per ton special reclamation tax, its increase to seven and four-tenths cents per ton, as well as the creation of the Special Reclamation Water Trust Fund, on an interim basis, with our approval becoming effective upon publication of this interim rule.

DATES: *Effective Date:* This rule is effective June 16, 2008. *Comment Date:* We will accept written comments until 4 p.m., local time July 16, 2008. If requested, we will hold a public hearing on *July 11, 2008.* We will accept requests to speak until 4 p.m., local time on July 1, 2008.

ADDRESSES: You may submit comments by any of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule has been assigned Docket ID: OSM–2008–0010. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and do the following. Click on the ''Advanced Docket Search'' button on the right side of the screen. Type in the Docket ID OSM–2008–0010 and click the ''Submit'' button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM–2008–0010, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.
- *Mail/Hand Delivery:* Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, WV 25301. Please include the rule identifier (WV–114–FOR) with your written comments.

Instructions: All submissions received must include the agency Docket ID (OSM–2008–0010) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see ''IV. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: The interim rule and any comments that are submitted may be viewed over the Internet at *http://www.regulations.gov.* Look for Docket ID OSM–2008–0010. In addition, you may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, WV 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 601 57th Street, SE., Charleston, WV 25304, Telephone: (304) 926–0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 604 Cheat Road, Suite 150, Morgantown, West Virginia 26508, Telephone: (304) 291–4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description and Submission of the Amendment
III. OSM's Findings
IV. Public Comment Procedures
V. OSM's Decision
VI. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act.* * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description and Submission of the Amendment

By letter dated April 8, 2008, and received electronically on April 17, 2008 (Administrative Record Number WV–1503), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment includes changes to the West Virginia Code of State Regulations (CSR) and West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) as contained in Committee Substitutes for Senate Bills 373 and 751 concerning a variety of topics including new language regarding technical completeness, sediment control, storm water runoff, blasting, excess spoil fills, bonding programs, special reclamation tax, water quality, seismograph records, and definitions. OSM is publishing, under a separate **Federal Register** notice, the proposed rule and request for comments on changes in the amendment that are not specifically addressed by this action.

Committee Substitute for Senate Bill 751 amended Section 22–3–11 of the WVSCMRA. As stated in the April 8, 2008, letter transmitting the amendment, the revisions contained in Senate Bill 751 related ''* * * generally to the special reclamation tax by establishing the Special Reclamation Water Trust Fund; continuing and reimposing a tax on clean coal mined for deposit into both funds; requiring the Secretary to look at alternative programs; and authorizing the Secretary to promulgate legislative rules implementing the alternative programs.''

Specifically, the amended language relating to the special reclamation tax and the Special Reclamation Water Trust Fund reads as follows:

§ 22–3–11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

(g) The Special Reclamation Fund previously created is continued. The Special Reclamation Water Trust Fund is created within the State Treasury into and from which moneys shall be paid for the purpose of assuring a reliable source of capital to reclaim and restore water treatment systems on forfeited sites. The moneys accrued in both funds, any interest earned thereon and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section and section seventeen, article one of this chapter. The funds shall be administered by the secretary who is authorized to expend the moneys in both funds for the reclamation and rehabilitation of lands which were subjected to permitted surface mining operations and abandoned after the third day of August, one thousand nine hundred seventy-seven, where the amount of the bond posted and forfeited on the land is less than the actual cost of reclamation, and where the land is not eligible for abandoned mine land reclamation funds under article two of this chapter. The secretary shall develop a long-range planning process for selection and prioritization of sites to be reclaimed so as to avoid inordinate short-term obligations of the assets in both funds of such magnitude that the solvency of either is jeopardized. The secretary may use both funds for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation of the affected lands described in this subsection. The secretary may also expend an amount not to exceed ten percent of the total annual assets in both funds to implement and administer the provisions of this article and, as they apply to the Surface Mine Board, articles one and four, chapter twenty-two-b of this code.

(h)(1) For tax periods commencing on and after the first day of July, two thousand eight, every person conducting coal surface mining shall remit a special reclamation tax as follows: (A) For the initial period of twelve months, ending the thirtieth day of June, two thousand nine, seven and four-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund; (B) an additional seven cents per ton of clean coal mined, the proceeds of which shall be deposited in the Special Reclamation Fund. The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply. The additional seven-cent tax shall be reviewed and, if necessary, adjusted annually by the Legislature upon recommendation of the council pursuant to the provisions of section seventeen, article one of this chapter: *Provided,* That the tax may not be reduced until the Special Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet the reclamation responsibilities of the state established in this section.

III. OSM's Findings

Effective upon publication of this interim rule, we are approving the revisions to section 22–3–11(g) and (h)(1) of the WVSCMRA, which reinstate and increase the Special Reclamation Tax and create the Special Reclamation Water Trust Fund on an interim basis. Since these revisions increase revenues into the State's alternative bonding system and establish a Special Reclamation Water Trust Fund to be used to design, construct and maintain water treatment systems on forfeited sites, we find that they are no less effective than the Federal regulations at 30 CFR 800.11(e). Because our approval of these revisions is interim in nature, and in order to satisfy the public participation requirements for approval or disapproval of State program amendments we will accept comments on the reinstatement of and increase in the Special Reclamation Tax and on the creation of the Special Reclamation Water Trust Fund in accordance with section IV of this **Federal Register** notice. Following our review of the comments received, we will issue a final rule announcing the Director's final decision on the revisions to section 22–3–11(g) and (h)(1) of the WVSCMRA that are the subject of this interim rule.

Pursuant to the Administrative Procedure Act at 5 U.S.C. § 553(b)(3)(B), we find that good cause exists to approve the revisions to section 22–3–11(g) and (h)(1) of the WVSCMRA on an interim basis without notice and opportunity for comment, because to require notice and opportunity for comment now would be contrary to the public interest in that it would delay the start of the collection of the increased Special Reclamation Tax. Enrolled Committee Substitute for Senate Bill 751 becomes effective under State law on July 1, 2008, and the public interest in the accomplishment of prompt and thorough reclamation of bond forfeiture sites, including water treatment of discharges therefrom, will be adversely affected if the 7.4 cent per ton Special Reclamation Tax cannot be collected on and after that effective date. In any event, as explained above, the public will have an opportunity to comment on the reinstatement of and increase in the Special Reclamation Tax, and on the creation of the Special Reclamation Water Trust Fund, before we make a final decision.

IV. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether these amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve these revisions, they will become part of the West Virginia program.

Written Comments

Send your written comments to OSM at one of the addresses given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**).

Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (Eastern time), on *July 1, 2008.* If you are disabled and need reasonable accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after

everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Docket for this rulemaking.

V. OSM's Decision

Based on the above findings, we are approving on an interim basis, the specific revisions outlined above to the West Virginia program as provided to us on April 17, 2008. To implement this decision, we are amending the Federal regulations at 30 CFR Part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this interim rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on an analysis of the State submission.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State previously had a special reclamation tax of $0.07 per ton of clean coal mined which expired on September 1, 2006. The tax was used to reclaim bond forfeiture sites in the State. On March 27, 2008, the Governor signed into law a bill that reinstated and increased the special reclamation tax to $0.074 per ton for the period July 1, 2008, through June 30, 2009 and created the Special Reclamation Water Trust Fund for the purpose of designing, constructing and maintaining water treatment systems at bond forfeiture sites. Mined coal would also be subject to an additional tax of $0.07 or a total tax of $0.144 per ton. The combined tax rate of $0.144 will yield approximately $10.7 million in additional revenue for bond forfeiture reclamation, including water treatment, during this 12-month period. The tax is payalabe by all coal operators mining coal in West Virginia, regardless of size.

Small Business Regulatory Enforcement Fairness Act

Based upon the above analysis and discussion, we have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment,

productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 22, 2008.

Thomas D. Shope,

Regional Director, Applachian Region.

■ For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

■ 1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.15 is amended by adding a new entry to the table in chronological order by ''Date of publication of final rule'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
*	*	*
April 17, 2008	June 16, 2008	W. Va. Code 22–3–11(g) (interim approval), 11(h)(1) (interim approval).

[FR Doc. E8–13456 Filed 6–13–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 217 and 218

[Docket No. FRA–2006–25267]

RIN 2130–AB76

Railroad Operating Rules: Program of Operational Tests and Inspections; Railroad Operating Practices: Handling Equipment, Switches and Fixed Derails

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to four petitions for reconsideration of FRA's final rule which was published on February 13, 2008. The rule mandated certain changes to a railroad's program of operational tests and inspections and mandated new requirements for the handling of equipment, switches, and fixed derails.

DATES: This regulation is effective on June 16, 2008.

FOR FURTHER INFORMATION CONTACT: Douglas H. Taylor, Staff Director, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., RRS–11, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6255); or Alan H. Nagler, Senior Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., RCC–11, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

SUPPLEMENTARY INFORMATION:

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I. Background

On May 18, 2005, the FRA's Railroad Safety Advisory Committee (RSAC) accepted a task statement and agreed to establish the Railroad Operating Rules Working Group (Working Group) whose overall purpose was to recommend to the full committee how to reduce the number of human factor caused train accidents/incidents and related employee injuries. After consideration of the Working Group's recommendations, FRA published a Notice of Proposed Rulemaking (NPRM) on October 12, 2006 to establish greater accountability on the part of railroad management for administration of railroad programs of operational tests and inspections, and greater accountability on the part of railroad supervisors and employees for compliance with those railroad operating rules that are responsible for approximately half of the train accidents related to human factors. *See* 71 FR 60372. FRA received written comment on the NPRM as well as advice from its Working Group in preparing a final rule, which was published on February 13, 2008. *See* 73 FR 8442.

Following publication of the final rule, parties filed petitions seeking FRA's reconsideration of the rule's requirements. These petitions principally related to the following subject areas: the implementation dates; shove lights; the need for individual liability and enforcement; good faith challenge procedures; the point protection technology standard for remote control locomotive operations; and FRA's rulemaking authority.

This document responds to all the issues raised in the petitions for reconsideration except the issue pertaining to FRA's rulemaking authority which is being addressed in a separate letter to that specific petitioner. FRA will make that response part of the public docket related to this proceeding. The amendments contained in this document in response to the petitions for reconsideration generally clarify the requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, and are within the scope of the issues and

options discussed, considered, or raised in the NPRM.

The specific issues and recommendations raised by the petitioners, and FRA's response to those petitions, are discussed below. The discussion will aid the regulated community in understanding the requirements of the rule.

II. Major Issues Raised by Petitions

A. Implementation Dates

Petitioner Concern: Dates Do Not Provide Sufficient Time To Comply

The Association of American Railroads (AAR) and the American Public Transportation Association (APTA) each submitted a petition for reconsideration requesting delays for the implementation of training and program deadlines found in 49 CFR 217.9 and 218.95. AAR is a trade association whose membership includes freight railroads that operate 72 percent of the line-haul mileage, employ 92 percent of the workers, and account for 95 percent of the freight revenue of all railroads in the United States. AAR's membership also includes passenger railroads that operate intercity passenger trains and provide commuter rail service. APTA's members include commuter railroads. The National Railroad Passenger Corporation (Amtrak) is a member of both AAR and APTA.

AAR and APTA raised similar concerns and requested the same action. Both associations requested that each implementation date contained in 49 CFR 217.9 and 218.95 be extended by six months.

Both petitions for reconsideration explained that railroads will need to overcome certain obstacles to establish a program of operational tests and inspections under 49 CFR 217.9. For example, AAR stated that the recent amendments to this section require each railroad to conduct specific types of periodic reviews and that some railroads have not been using any formal periodic reviews. In addition, those railroads implementing periodic reviews for the first time will need time to craft and implement a carefully thought out and worthwhile program. AAR also pointed out that oversight of the program will require a recordkeeping system that will aid in implementation and tracking compliance and that it is unaware of any railroad having such a recordkeeping system currently in place. Similarly, APTA stated that four months is not enough time for passenger railroads to review accident/incident records, determine which operating rules require particular emphasis in the testing and inspection program, develop the additional testing and inspection procedures, and qualify railroad testing officers on how to properly conduct the tests and inspections. APTA emphasized that passenger railroads are requesting additional time to do the job right rather than just quickly.

Both associations raised concerns with the requirements in § 217.9(b) that pertain to qualifying railroad testing officers and keeping written records documenting each railroad testing officer's qualification. APTA pointed out that the requirements pertaining to railroad testing officers are new, and implied that each railroad would need to expend additional resources to confirm that each railroad testing officer is qualified and to maintain records supporting each qualification decision. AAR stated that the July 1, 2008 deadline for implementing paragraph (b) is unrealistic because it does not provide a railroad with sufficient time to qualify supervisors on the new requirements. AAR also suggested that many railroads will want to maintain an electronic recordkeeping system for tracking the qualifications of supervisors; and the applicability deadline of July 1, 2008 does not provide sufficient time to establish a new recordkeeping system. AAR also disliked FRA's suggestion that ''if a railroad has not previously kept a record of whether an officer is qualified on the operational testing program, that the railroad create a short survey which would allow an officer to acknowledge whether the officer considers himself/herself qualified on the various aspects of the program, as well as qualified (either through experience or prior instruction, training, and examination) on the various types of tests and inspections that the officer may be asked to conduct.'' 73 FR 8457. AAR asserts that if training took place before the establishment of a recordkeeping system, FRA and a railroad could be reliant on oral testimony, which could well result in controversial enforcement citations. Implied in AAR's concern is that some railroad testing officers may believe they know how to conduct certain tests or inspections, but the officer's ability to conduct a particular test or inspection has not been confirmed by the railroad. Consequently, AAR is concerned that a railroad testing officer that exaggerates his or her abilities could potentially subject a railroad to liability if the officer were to conduct an improper test. *See* § 217.9(b)(1).

Both AAR and APTA are members of RSAC and were told by FRA that the agency's goal was to publish the final rule by the fall of 2007. APTA states that had FRA published the rule in the fall of 2007, its members could have complied with the training in the 2008 training cycle. AAR and APTA both requested that FRA consider that a consequence of publishing the final rule in the first quarter of 2008 was that the vast majority of railroads that typically conduct the bulk of training during the first quarter of the year are now thwarted from doing so. Both associations argued that it would be too difficult to alter training programs by July 1, 2008 pursuant to § 218.95(a) because new training course material is usually developed in the second half of the year. Railroads primarily allocate the first quarter of each year to training employees, but often that training continues into the second quarter. The trainers are typically the same people employed to revise the training programs in the second half of the year. Thus, it would be difficult for the railroads to finish the training already planned for 2008 while revising the training required by the final rule. AAR and APTA also argued that it would be difficult and costly to qualify employees in accordance with 49 CFR part 218, subpart F, by January 1, 2009 because employees are not as available as they are during the first quarter of the year due to personal and business obligations.

FRA's Response

When FRA published the final rule, the agency did not fully appreciate the difficulties most railroads would face in trying to comply with the implementation dates. FRA was under the impression that it was providing a sufficient amount of time for a railroad to comply and that the implementation dates would not be controversial. FRA understood that by publishing the rule in mid-February, each railroad would need to qualify its employees and supervisors, as well as implement the new and revised programs outside of the railroads regular schedule for such actions. FRA perceived the actions needed for compliance to be not that much different than existing railroad programs relating to operating rules.

Now that FRA has reviewed AAR and APTA's petitions for reconsideration, we agree with the associations that delayed implementation is warranted for the reasons expressed in the petitions. It is important that each railroad effectively qualify its railroad testing officers and implement a meaningful program of tests and inspections under 49 CFR 217.9. The associations are certainly correct that

ensuring railroad testing officers are qualified is an important aspect of the revised section and that keeping accurate records of the qualifications of each railroad testing officer is an integral component of that requirement. Thus, FRA is granting AAR and APTA's requests to amend the applicability dates in 49 CFR 217.9, the logistics of which are described in the section-by-section analysis for that section.

FRA also agrees with AAR and APTA's requests to amend the applicability dates in 49 CFR 218.95. The associations' petitions for reconsideration helped FRA understand the full extent of the burden the final rule will place on each railroad. FRA certainly prefers providing each railroad with the additional time it needs to fully implement 49 CFR part 218, subpart F than have a situation where many railroad programs are put together so quickly that the programs contain mistakes or fall short in some way, or training is rushed to the extent that employees do not fully understand the operating rules and the importance of them. Thus, FRA is granting AAR and APTA's requests to amend the applicability dates in 49 CFR 218.95, the logistics of which are described in the section-by-section analysis for that section.

B. Shove Lights

AAR Petition

AAR's petition requested reconsideration of FRA's decision to exclude shove lights as an acceptable technological alternative to visually protecting the point pursuant to the requirements in 49 CFR 218.99(b)(3)(i) unless either: (1) The track is completely circuited to indicate occupancy; or, (2) a visual determination is made that the track is clear to the beginning of the circuited section of the track. 73 FR 8478. Shove lights are lights that are sequentially circuited on the ends of departure tracks in classification yards to indicate a shoving movement's approach to the opposite end of a track. There are a variety of different shove light arrangements, some using a single aspect/light and others using multiple aspects that have the ability to provide greater information regarding how much room is left in the circuited portion of the track. At some locations, radio messages are generated, instead of lights, to indicate when the cars being shoved have reached the bonded or circuited section of track.

AAR acknowledges that ''since shove lights or radios technically provide protection only for the length of the bonded track, not the entire length of the departure track, they arguably do not provide the equivalent of direct visual observation.'' Despite this acknowledgment, AAR's petition requests that FRA reconsider the shove light issue as a permitted operational exception under § 218.99(e). AAR makes two arguments in support of permitting shove lights and radio signal arrangements. One argument is that there is no evidence that the use of shove lights has caused accidents or injuries despite having been used for over thirty years. A second argument is that a prohibition on shove lights and radio arrangements creates an increased risk of injuries and thus does not justify the prohibition. AAR attributes the potential for an increase in injuries to the risks employees would need to take to visually determine the departure track is clear. For example, an employee who undertakes the riding of a long shove move or chooses to walk along the track would be at risk of a slip and fall injury due to the need to mount and dismount equipment or the need to walk carefully—especially in inclement weather. Another added risk to riding the shove move or walking the track is the danger posed by the close proximity to other tracks, i.e., close clearances. An employee riding a shove move where there are close clearances is at risk of being struck by equipment on an adjacent track.

Joint Labor Petition Response Opposing AAR's Petition

A joint response to AAR's petition was filed by the presidents of six labor organizations (Joint Labor Petition): the American Train Dispatchers Association (ATDA); the Brotherhood of Locomotive Engineers and Trainmen, a division of the Rail Conference of the International Brotherhood of Teamsters (BLET); the Brotherhood of Maintenance of Way Employes Division of the Rail Conference of the International Brotherhood of Teamsters (BMWED); the Brotherhood of Railway Carmen Division of the Transportation Communications International Union (BRC); the Brotherhood of Railroad Signalmen (BRS); and the United Transportation Union (UTU). These labor organizations represent over 140,000 railroad workers engaged in train and engine service, train dispatching operations, equipment inspection, maintenance and repair, roadway worker activities, and signal construction, maintenance and repair. The Transportation Trades Department, AFL–CIO (TTD) filed a separate comment in support of the Joint Labor Petition.

The Joint Labor Petition opposes AAR's request for reconsideration of the shove light exception. This opposition is based on the fact that the track, unless completely circuited, will not be determined to be clear. The Joint Labor Petition points out that the final rule permits technology to substitute for a direct visual determination and thus one option is for a railroad to add additional indicator circuits. FRA notes that the Joint Labor Petition did not respond to AAR's assertions that there is no evidence that the use of shove lights has caused accidents or injuries despite having been used for over thirty years and that a prohibition on shove lights and radio arrangements creates an increased risk of injuries that does not justify the prohibition. The Joint Labor Petition argues that AAR seeks to institutionalize a practice that is dangerous and will lead to an increase in accidents, incidents, and injuries, but the response does not elaborate on this conclusion.

FRA's Response

In response to AAR's petition, and after considering the Joint Labor Petition's comments, FRA has decided to grant AAR's petition for reconsideration in part and deny it in part. FRA agrees to add an operational exception under § 218.99(e)(5) for shoving or pushing movements made in the direction of the circuited end of a designated departure track equipped with a shove light system under certain specified conditions. The operational exception and the specified conditions are described in the section-by-section analysis. Many railroads with existing shove light systems should find that few changes, if any, will be necessary to comply with the requirements for the exception in new paragraph (e)(5).

After publication of the final rule, FRA received feedback that some railroads were disappointed with FRA's position on shove lights. As the issue did not initiate much discussion during the Working Group meetings, FRA had not compiled much information on it. In anticipation that a petition for reconsideration on the shove light issue might be filed, FRA conducted a review of shove light systems utilized by the major railroads.

Between February 25 and March 21, 2008, FRA reviewed procedures and observed operations on departure tracks with shove light systems throughout the country. FRA surveyed the major railroads to find out where shove lights were used and received information that five of the seven major railroads used shove light systems at thirty-four major classification yards in seventeen states.

FRA confirmed through inspections that the railroads did not utilize shove light systems at any other major yard. The thirty-four yards contained a total of 356 departure tracks equipped with shove lights. Only seven of the thirty-four yards were found to provide point protection by having the departure tracks entirely circuited or by using cameras to determine that the track is clear. Thus, FRA focused its attention on whether the remaining twenty-seven yards that did not already meet FRA's new requirement for point protection under § 218.99(b)(3) were safe operations nonetheless.

For instance, FRA conducted a review of accident/incident data that supports AAR's position that departure tracks that use shove light systems are reasonably safe operations. FRA reviewed data for the twenty-seven departure yard operations that utilize shove lights for the twenty-six month period from January 2006 through February 2008. The total number of tracks available for use as departure tracks at these twenty-seven yards is 291. FRA's review included railroad records of all reportable and accountable rail equipment accidents/incidents, and thus FRA's review included minor incidents that would not have met FRA's reportable threshold for an accident/incident. See 49 CFR 225.5 (defining ''accident/incident'' and ''accountable rail equipment accident/incident''); 225.19 (defining the three groups of railroad accidents/incidents that are reportable); and 225.21(i) (requiring that a record of initial rail equipment accidents/incidents be completed and maintained). If FRA's review had included only reportable accidents/incidents, and not accountable rail equipment accidents/incidents, the scope of the review would have been significantly more limited and would not have included derailments and collisions that caused minor damage to track or on-track equipment.

The records revealed that eighteen of the twenty-seven departure yard operations, *i.e.*, 67 percent of the yards, did not have any human factor caused reportable or accountable rail equipment accidents/incidents during the twenty-six month period, and only one yard had recorded more than two accidents/incidents. Nine departure yard operations recorded a total of nineteen human factor caused reportable or accountable rail equipment accidents/incidents during the review period. Although FRA did not conduct investigations to determine whether the primary cause listed by each railroad is accurate, the records suggest that five of these nineteen accidents/incidents would not have been prevented through compliance with the point protection requirement of § 218.99(b)(3) or any of the requirements in 49 CFR part 218, subpart F; *i.e.*, four accidents/incidents were caused by some form of train handling error and one accident/incident was caused by a remote control operator's failure to hear a radio transmission to stop the movement. In addition, five accidents/incidents were caused by either improperly lining, locking, or latching switches, which are concerns addressed by requirements found in subpart F. Thus, FRA finds that, during the twenty-six month review period, only nine human factor caused reportable or accountable rail equipment accidents/incidents might have been prevented through compliance with point protection requirements rather than relying on shove light systems and attendant procedures.

FRA found fair to good illumination throughout the departure yard tracks, particularly at the entry and departure ends of each track. The circuited portion of the departure tracks ranged from 150 feet to a little over 500 feet, with an average of 360 feet.

At all twenty-seven yards, non-visual procedures were in place that provided yardmasters with a high degree of confidence with respect to the status of any of the departure tracks. One procedure common to all twenty-seven yards included a ''turn-over'' report, i.e., a job briefing, given verbally from one yardmaster to the next, based on the information logged on a written turn-over sheet. In addition to the turnover report, at many yards, the yardmaster had access to a computer generated inventory allowing the yardmaster to monitor each car from the moment it arrived onto the receiving yard tracks. Many of these yardmasters were also able to track by computer the movements of each car through the yard complex. Some yardmasters also received information about each transfer job that brought cars from the classification yard to the departure yard. At some yards, railroads instituted standard instructions that required any car cut-off a departing train to be left on the circuited section of the track on which it was to be placed. Thus, if a car was left on the circuited section of track, a person observing the shove light would know that some equipment was left there and would be required to take appropriate action to determine what was left on the departure track prior to initiating a shoving or pushing movement. Meanwhile, other yards maintained similar instructions that any car to be cut-off a departing train must be left as close as possible to the end of the track opposite the circuited end of the departure track without fouling another track. This instruction permitted the person directing the movement to readily observe that the track was not clear and to take appropriate action to protect the shoving or pushing movement.

The descriptions of these different non-visual procedures is not intended to be an exhaustive list of all the types of procedures that have been or could be implemented. FRA is describing these types of procedures because our recent review suggests that having these types of procedures help establish a reliable means of determining track occupancy. As each departure yard may have its own set of safety concerns and already established procedures, FRA is not requiring that all railroads adopt a particular set of non-visual procedures. However, as these types of procedures contribute to the overall safety record of departure tracks utilizing shove lights, the final rule contains a requirement that the types of procedures which provide for a reliable means of determining track occupancy prior to commencing a shoving or pushing movement must be adopted in writing so that yardmasters and other employees can fully understand the operation. *See* § 218.99(e)(5)(iii).

FRA's observations revealed that shove light systems can maintain an acceptable degree of safety. Our review suggests that, in addition to the establishment of non-visual procedures, several factors collectively promote a safe operation. For instance, there is a relatively small number of moves onto and off of the departure tracks. Compared to other yard operations, there is typically less danger on departure tracks with shove light systems in that fewer switches are operated in the departure yard and there are no free rolling cars. Furthermore, FRA noticed that each of the twenty-seven departure yards were well supervised by either a yardmaster or other qualified employee.

FRA's observations at the twenty-seven departure yards with shove light systems also revealed that some of the departure tracks evaluated have close clearances that could potentially pose a risk of an accident or injury to a rail employee attempting to make a visual determination that the departure track is clear. FRA found five of the departure yards had at least some tracks with close clearances that pose a significant potential risk of an injury to an employee protecting the point. While some departure yards had tracks with

very good clearances, most tracks were found to have normal clearances—which could still pose injury hazards due to the amount of clearance. Furthermore, it could be difficult for an employee riding the point of the move to see that a derail is applied and that employee could be seriously injured if the movement were to operate over the derail. In addition, FRA noted that departure tracks were generally long yard tracks. The length of the departure tracks is a factor in deciding whether to allow shove light systems to be used in lieu of point protection because employees would probably walk or ride the side of a car to provide point protection and lengthy departure tracks would expose employees to injury risk for a longer period than if the tracks were shorter. In conclusion, FRA's observations corroborated AAR's assertion that if employees were required to provide point protection by riding the side of a car or walking along the departure tracks, there would be an increased risk of injuries.

FRA is granting AAR's petition for reconsideration in part, and will allow a shove light system under certain conditions to substitute for point protection, because the recent accident/incident histories at eighteen out of the twenty-seven major railroad departure yards have been excellent. FRA's decision is not based on AAR's concern that employees need to be protected from the dangers posed by protecting the point where there are close clearances. FRA believes that the risks of employees suffering injuries could be avoided greatly if more departure tracks equipped with shove light systems were either completely circuited or had cameras added that could be remotely viewed to determine the track is clear. In fact, FRA found five major railroad departure yards that maintain such cameras and two major railroad departure yards that maintain shove light systems with completely circuited departure tracks. Although FRA is promulgating an operational exception for shove light systems, we encourage each railroad to consider installing cameras or fully circuiting the departure tracks—especially in departure yards where non-compliance with yard procedures adopted under § 218.99(e)(5)(iii) are found on a regular basis. Meanwhile, FRA has concluded that under certain conditions, a shove light system is a safe operation. Therefore, a railroad may utilize a shove light system, under the conditions specified in § 218.99(e)(5), as an alternative to having a qualified employee make a visual determination that the departure track is clear.

FRA is, however, denying that portion of AAR's petition that requests the inclusion of shove warning systems that rely solely on radio signal warnings because radio signals offer a lower level of safety to that of a shove light system. One of the essential conditions considered in partially granting AAR's petition allowing shove light systems to substitute for a qualified employee visually determining the track is clear, is that the shove light system must be demonstrated to be failsafe. Shove warning systems that rely solely on radio signal warnings are not considered failsafe and FRA is skeptical that a system based on radio signals alone can ever be made failsafe.

Radio signal based shove systems are designed to send radio signal warnings when the movement is occupying the circuited track. The radio warning typically states how much room is left in the departure track for the shoving or pushing movement by indicating a number of car lengths. If the shoving or pushing movement has not reached the circuited end of the departure track, the system will be silent. Thus, the train crewmember or other qualified employee listening to the radio and directing the move will interpret silence to mean the track is clear to continue the shoving or pushing movement. Silence may not always mean that the movement is not occupying the circuited end of the track. For example, the radio may be silent because it is malfunctioning. A radio may be silent if its battery is expired. Also, a person listening to a radio may not hear a radio warning for a variety of reasons including, but not limited to, a weak transmission signal; static; the radio's volume is too low; or, a radio signal is blocked by a competing transmission because it is not broadcast on a dedicated channel. Finally, unlike shove light systems which remain continuously illuminated until the circuited section of track is occupied, FRA observed that the radio signal based shove system does not continuously send radio warnings that help monitor the departure end of the track once the movement has completely occupied the circuited section of track.

FRA might be willing to reconsider this decision or grant a waiver for a shove warning system that relies solely on radio signal warnings if it can be demonstrated to be failsafe. However, given the logistical hurdles of arranging such a system, it would probably be easier to switch to a shove light system or add some kind of light component to the existing radio signal based shove system. As FRA found only one major railroad departure yard that solely used radio signals as a shove system, FRA does not anticipate that this denial decision will have any significant impact on that railroad or on the industry.

C. Individual Liability and Enforcement

1. Petitioner Concern: Accident Data Does Not Support Individual Civil Penalties

The Joint Labor Petition requested reconsideration of the willful civil penalties published in the penalty schedule at 49 CFR part 218, app. A and the need for individual liability for willful violations; TTD's comment supported the Joint Labor Petition. The Joint Labor Petition analyzed the accident data showing that there has been a reduction in both the raw number of accidents/incidents and the corresponding rates for the period 2005 through 2007 that exceeded the increase for the period 2000 through 2004. Based on the analysis of that data, the Joint Labor Petition concludes that ''[w]hile Petitioners concur that discipline—on the part of both our members and their supervisors—is an essential element in rule compliance, our analysis of FRA's data establishes beyond question that the spikes in the number of human factor accidents/incidents and the frequency with which they occurred were not due to any industry-wide breakdown in rules compliance discipline.'' Thus, on this first issue, the petition contends that the empirical basis no longer exists for FRA's decision to include individual liability for civil penalties in the final rule.

FRA's Response

The labor filing is a model of railroad safety scholarship, describing in broad strokes the major changes in the industry that, in the view of the writers, may have influenced safety trends. The resulting explanations attempt to fit safety data within a multi-factor analysis and lay the foundation for the requested relief. The history of a major industry is complex; and this proceeding is not the proper venue to agree or disagree about such theorems, however interesting that discussion might be.

Rather, it is necessary to state that the central premise of the joint labor filing is incorrect, because it is not FRA actions that invoke the potential for civil penalty sanctions. Rather, civil penalty sanctions are a statutorily-imposed consequence of regulatory non-compliance. 49 U.S.C. 21301. Labor

organizations have been among the more strenuous advocates of strong civil penalties as an answer to non-compliance by railroads and rail contractors, and even if FRA were at liberty to provide blanket immunity from statutory sanctions, there is nothing in the filing to support the conclusion that such sanctions would be less successful in influencing the intentional actions of individual employees than the unintentional or intentional actions of railroads and rail contractors. Indeed, individual employees are already accountable for personal compliance with a significant number of FRA regulations; and FRA is satisfied that the deterrent effect associated with the availability of a monetary sanction is helpful in preventing accidents that might occur through sloth or knowing reckless behavior. FRA has seldom found it necessary to invoke these sanctions against individuals, and in many cases where such action has been taken the targets have been railroad officers, rather than rank and file employees.

Whether or not one subscribes to the proposition that penalties are necessary, giving the subject rules the status of Federal law should without question promote awareness among officers and employees regarding their responsibilities to one another and to the public. The labor filing (at page 5) acknowledges that ''a more substantial framework of regulations'' (FRA's phrase) should be helpful in maintaining discipline during the current period of change in the railroad industry. The potential for civil penalties follows automatically, based on congressional action.

Although FRA agrees with the Joint Labor Petition that the number of human factor incidents has declined over the past few years, we do not agree that this trend diminishes the need for a regulation containing the potential to demand payment of civil money penalties from individuals for willful violations. There are a variety of reasons for the recent downward trend including, but not limited to, FRA's focus on the increase in human factor caused accidents/incidents from 2000 through 2004 in the RSAC and Working Group meetings. By bringing this issue to the railroad industry's attention, railroads have placed increased emphasis on compliance with the operating rules FRA expressed an intention to consider regulating. Focused compliance reviews by FRA and aggressive, direct contacts with responsible railroad operating officers have no doubt contributed to this good result. Historically, FRA has noted previous positive trends after raising a safety concern with the industry, but prior to promulgation of a regulation. These trend lines do not always continue positively, and, without a regulation, FRA would be left with fewer options if accidents/incidents were to suddenly increase. Further, it would be fundamentally wrong to assume that major additional advances in the safety of railroad operations are not achievable. Rules compliance requires clear and unambiguous rules and procedures, common expectations for compliance that are modeled by line supervisors, excellent training, and regular verification that rules and procedures are being followed. This is the foundation for acceptable safety performance, and on that foundation can be built truly outstanding safety performance if the culture of the organization and the processes in place support open and productive communication to identify hazards, enhance crew performance, and refine work processes. FRA appreciates that this regulation cannot construct the entire edifice, but it can and must provide the foundation.

As FRA has statutory authority to issue penalties against individuals for willful violations, FRA would retain this authority even if it deleted the willful penalties in the schedule of civil penalties (which section 49 U.S.C. 21301(a)(2) directs us to provide). As FRA explained in its ''Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws'' found at 49 CFR part 209, app. A, the Rail Safety Improvement Act of 1988 (*see* 49 U.S.C 21304) made individuals liable for willful violations of the Federal railroad safety statutes that FRA enforces under delegation from the Secretary of Transportation. *See* 49 CFR 1.49(c), (d), (f), (g), and (m). In that published policy statement, FRA explains how the agency intends to decide if an individual has acted willfully and how it will consider whether enforcement action is warranted against an individual. In the preamble to the final rule, FRA also explained that it did not single this regulation out for individual liability enforcement, but that ''[e]ach of FRA's rail safety regulations permit enforcement against any person who violates a regulatory requirement or causes the violation of any requirement.'' 73 FR 8452–53. The publishing of the schedule amounts are merely meant to provide guidance as to FRA's policy in predictable situations, not to bind FRA from using the full range of penalty authority where extraordinary circumstances warrant it. FRA will continue to exercise appropriate discretion with regard to individual liability enforcement matters as it does in all civil penalty matters cited against railroads.

2. Petitioner Concern: Individual Liability Produces a Chilling Effect on Safety

The Joint Labor Petition's second request in this area was that FRA should eliminate the willful civil penalties published in the penalty schedule at 49 CFR part 218, app. A and FRA should not seek civil penalty enforcement against individuals under 49 CFR part 218. The petitioner contends that individual liability produces a chilling effect that will diminish, rather than enhance, safety. The Joint Labor Petition disagreed with FRA's position that an employee would have an incentive to self-report noncompliance because such self-reporting would likely be considered a reason for FRA to exercise its enforcement discretion not to take enforcement action against the individual. Instead, the Joint Labor Petition focused on FRA's statement that ''[s]elf-reporting is not * * * a defense to a potential individual liability action, and self-reporting does not absolutely preclude FRA from taking enforcement action against an individual.'' 73 FR 8453. The Joint Labor Petition concludes that an employee has a disincentive to self-report as the employee is likely to face a railroad disciplinary sanction and an FRA civil penalty.

FRA's Response

In FRA's view, the Joint Labor Petition did not acknowledge FRA's caveat that ''FRA would consider self-reporting a strong reason for mitigation of the civil penalty, disqualification order, or other enforcement remedy.'' 73 FR 8453. The flip side of that argument is also true in that FRA would consider the failure to self-report non-compliance immediately after the non-compliance is discovered to be an aggravating factor justifying a higher penalty or longer period of disqualification. In the preamble, FRA emphasized that when each railroad instructs its employees on its operating rules, it should emphasize this incentive to self-report. FRA continues to encourage each railroad to reconsider its own discipline policy so that it does not discourage self-reporting of inadvertent noncompliance. For example, FRA continues to fund and promote the Confidential Close Call Reporting System Demonstration Project, which permits participating employees to self-report certain types of

non-compliance without fear of railroad discipline or FRA enforcement. FRA believes that by encouraging self-reporting, an analysis of the data may reveal the identification of accident precursors or suggest ways to reduce the likelihood of future non-complying incidents that have the potential to cause accidents/incidents.

FRA also expects that most individuals would self-report because it is the safe course of action. An individual who chooses not to self-report after realizing he or she failed to comply with an important operating rule is likely to be putting him or her self, or colleagues, at risk of serious injury or death. Thus, FRA would expect that individuals who discover their own non-compliance would find the risks associated with choosing not to self-report far worse than the potential of being disciplined or fined for failing to comply, especially if the risk of a more severe disciplinary action or greater penalty is likely for a violation discovered and not immediately reported.

The Joint Labor Petition also raised the issue that an innocent employee could be held liable for a civil penalty under the final rule if the employee was the last person recorded as handling a switch that was later found misaligned. The petition explained that it might be possible, on some railroads, for a roadway worker to manipulate main track switches in non-signaled territory without track authority or permission from the train dispatcher or control operator. The petition stated that FRA could end up enforcing a civil penalty against the wrong individual, and thus FRA should not cite individuals for civil penalties. FRA's response is that this issue raises an evidentiary proof matter and a concern FRA will need to address on a case-by-case basis. However, FRA does not view this issue as a reason to completely forgo the agency's statutory authority to cite individuals for civil penalties.

In the conclusion section of the Joint Labor Petition, the petition suggests that FRA forgo the agency's statutory authority to cite individuals for civil penalties in favor of FRA's disqualification procedures. *See* 49 CFR part 209, subpart D. The petition argued that disqualifying an individual from performing safety sensitive service is a ''more than sufficient means available to enforce [part 218,] subpart F'' and that ''there is neither a sound basis, nor a public interest, in the creation of individual liability for civil penalties.'' We disagree. These are two different enforcement mechanisms and there may be instances where a disqualification is not warranted, and the less drastic response of a reasonable civil penalty is more appropriate. For instance, there may be instances where a person has a long work history of complying with operating rules but is found to have committed a willful violation one time. In these instances, it is likely more appropriate to demand a one-time civil penalty and allow the person to continue working in safety sensitive service than to initiate disqualification proceedings. In other circumstances, a person with or without a good history of compliance may be found to have committed a willful violation but there are aggravating circumstances that suggest the more extreme penalty of disqualification is unwarranted. Thus, in order to permit FRA to consider the appropriate enforcement mechanism and to provide maximum flexibility in its enforcement actions, FRA is denying the Joint Labor Petition's requests to eliminate the willful civil penalties published in the penalty schedule at 49 CFR part 218, app. A and for FRA to pledge not to seek civil penalty enforcement against individuals under 49 CFR part 218, subpart F.

D. Good Faith Challenge

1. Request To Eliminate Provision

AAR's petition for reconsideration requests that FRA reconsider the need for any good faith challenge regulation. *See* 49 CFR 218.97. According to AAR, employees have statutory protection under 49 U.S.C. 20109 against retaliation for refusing to comply with a directive to violate a Federal regulation and thus it is puzzling why FRA is promulgating a regulation which has the potential to interfere significantly with railroad operations. In addition, AAR objects to a good faith challenge regulation because the final rule did not adequately create a record for suspecting that employees have been, or will be, asked to engage in tasks that violate Federal regulations or these types of railroad operating rules. The Joint Labor Petition and TTD's comment disagreed with AAR's position on this issue.

FRA's Position

FRA disagrees with AAR and finds that there is a need for the good faith challenge regulation. The driving force for much of the final rule was the data showing significant increases in human factor caused accidents, and the high number of violations FRA found when it conducted inspections and investigations related to certain human factor cause codes. Prior to the effective date of the final rule, each railroad maintained similar operating rules governing the safe operation of shoving or pushing movements, leaving cars out to foul, and handling switches and fixed derails; meanwhile, over the first five years of this decade, human factor caused accidents accounted for 38 percent of all train accidents, and, in 2004, violations of the operating rules required in 49 CFR part 218, subpart F accounted for nearly 48 percent of all human factor accidents. Considering the mandatory nature of these railroad operating rules, it seems that there has been a high disregard for them either intentionally or unintentionally. Although we agree that FRA did not cite to specific examples of intentional non-compliance with railroad operating rules, FRA is aware of the pressure to occasionally shortcut an operating rule in order to maintain or increase production. FRA's awareness is derived from inspections and investigations, as well as shared experiences from FRA personnel who have previously worked for one or more railroads. The good faith challenge procedures are intended to empower employees who choose to abide by the railroad's operating rules but are either intentionally or unintentionally given a non-complying directive. The procedures are necessary to ensure that employees may challenge potentially non-complying directives immediately while the statutory protections in 49 U.S.C. 20109 primarily protect an employee from retaliation for refusing to comply with non-complying directives. Thus, the good faith challenge regulation has a different purpose than the statutory protections.

2. Request To Amend Provision

In the alternative, AAR's petition for reconsideration requests that FRA amend the good faith challenge procedures required by 49 CFR 218.97 so that they more closely resemble the roadway worker good faith challenge provisions. AAR states that FRA has departed from past precedent by issuing good faith challenge procedures that are different from those required for roadway workers. In AAR's view, the roadway worker regulations are clear and easily implemented, while the procedures in § 218.97 are complex and could result in delaying railroad operations. For example, AAR states that there may be situations when a supervisor and employee cannot resolve a challenge, and a suitable railroad officer is not available to provide for immediate review under paragraph (d)(1). (It appears that AAR might also be asking FRA to reconsider or make an exception to the immediate review required in paragraph (d)(1) for any

railroad regardless of size.) The Joint Labor Petition disagreed with AAR's position on this issue.

FRA's Response

FRA acknowledges that when it first began discussing this issue with the RSAC Working Group, FRA suggested that good faith challenge procedures similar to those promulgated for roadway workers might be appropriate. Discussions within the Working Group, especially with members representing labor organizations, revealed that roadway workers generally share a more cooperative working relationship with their supervisors than operating employees do with yardmasters, trainmasters and their other railroad officer supervisors. A supervisor of roadway workers is likely to be out at the work site and may share in the danger if the work gang is not adequately protected because the group failed to comply with a rule. A railroad officer supervising operating employees will likely not be at risk of injury to himself/herself through the issuance of a non-complying order but may be putting the operating employees executing the order, or other employees in the vicinity of the operation, in peril. For these reasons, a different approach, permitting a good faith challenge, is necessary.

With regard to the request that FRA should eliminate the requirement for immediate review under § 218.97(d)(1), FRA is denying the request. Any railroad with 400,000 or more total employee work hours annually should employ at least one railroad officer who can be on call in case a challenge requires immediate review. Each railroad should consider whether to address in its program the issues of who can be contacted and what protocol should be followed if the person issuing the challenged directive has difficulty finding an officer suitable for immediate review. FRA suggests that AAR ask its members to voluntarily keep track of problems associated with implementing the good faith challenge procedures so that it can be raised as a future task for the RSAC or in a future petition for rulemaking.

3. Implementation in Joint Operations

After publication of the final rule, FRA met with labor organizations and railroad associations to discuss issues related to implementation. During those meetings, several parties raised the fact that the rule does not address how the good faith challenge is required to be implemented in joint operations territory. For example, FRA has been asked what happens if employees from Railroad #1 are directed to perform a shoving or pushing movement in a yard on Railroad #2 and the employees believe they are being asked to violate a rule because the point is not being properly protected. FRA has been asked which railroad's good faith challenge procedures apply, and if Railroad #2's procedures apply, then are Railroad #1's employees required to be trained on Railroad #2's procedures.

FRA's Response

FRA acknowledges that the rule is silent on these issues. Generally, we would expect that the host railroad, i.e., Railroad #2 in the example, would want to maintain control of challenges made on its property and would therefore provide all reviews required. Although we expect quite a bit of uniformity among railroads, railroads who operate in joint operations will need to ensure that its employees know which railroad's procedures apply and what those procedures require. Meanwhile, as the rule is silent on this issue, we would not object to railroads engaged in joint operations making other arrangements as long as those arrangements are explained to its employees during the required training and provided for in its procedures. In conclusion, unless otherwise specified in a railroad's procedures, the host railroad's procedures will apply and it will be the host railroad's obligation to provide review of the alleged non-complying order and to maintain a record when necessary.

E. The Point Protection Technology Standard for Remote Control Zones

Requests for Clarification

AAR's petition explains that § 218.99(c)(2) provides that if technology is relied on to provide pull-out protection by preventing the movement from exceeding the limits of a remote control zone, the technology must be demonstrated to be failsafe or provide suitable redundancy. AAR does not object to the regulatory text. Instead, AAR's petition for reconsideration raises the question of whether a particular discussion in the preamble regarding the point protection technology standard for remote control zones is intended to be a requirement.

AAR is concerned that the preamble language will be read as a requirement. The preamble states that ''[w]hen determining whether the technology, such as transponders backed up by a global positioning system (GPS) with a facility database is acceptable, FRA finds that 49 CFR part 236, subpart H and the corresponding appendix C to part 236 (''Safety Assurance Criteria and Processes'') contains appropriate safety analysis principles.'' 73 FR 8479. AAR requests confirmation that the preamble reference to the safety analysis principles is meant to illustrate one way of determining if a technology is acceptable and the citation to part 236 is not meant to be a requirement. (Presumably, if FRA disagrees with AAR's understanding, AAR's petition is meant to request an amendment to this section as AAR implies that it objects to this reference if it is a requirement.).

The Joint Labor Petition responded to AAR's petition. First, the Joint Labor Petition points out that the final rule preamble contained an error when it stated that no comments were received in response to the NPRM concerning this issue. BLET specifically responded to FRA's request for comments by recommending that (1) the technologies used to ''fence'' remote control zones should be at least fail-safe and (2) to the extent that any of these technologies are not currently in use, they should be required to meet the criteria for processor-based signal and train control systems found in 49 CFR part 236, subpart H. The Joint Labor Petition reiterated BLET's recommendations and stated that remote control zone pull-out protection technology is, by definition, a train control system.

FRA's Response

FRA agrees with AAR that the preamble language reference to 49 CFR part 236, subpart H is intended to illustrate one way of determining if a technology is acceptable and the citation to part 236 is not meant to be a requirement.

In response to the Joint Labor Petition, FRA offers the following clarification. First, FRA wishes to thank BLET for reminding FRA that BLET had commented on the NPRM preamble language. Second, although FRA has provided that remote control zone pull-out protection technology must be demonstrated to be failsafe or provide suitable redundancy to prevent unsafe failure, a result consistent with the general approach of 49 CFR part 236, subpart H, FRA does not believe that this is the appropriate forum within which to determine the formal applicability of part 236. Although pullout protection arrangements are provided to restrict the movement of rolling equipment, they are not employed to authorize to control train movements; accordingly, using traditional interpretations they would not fall within the concept of a train control system. Nor do they resemble in function block signal systems. FRA is

aware of views of some that a variety of innovative technologies that perform functions analogous to traditional signal and train control systems should be regulated under part 236; however, FRA strongly believes that such issues should not be addressed piecemeal. Accordingly, FRA declines in this forum to assert the applicability of part 236 to systems used to prevent shoving movements from exceeding the intended boundaries.

Based on the discussion contained above, FRA is not amending the regulatory text as suggested in either AAR's petition or the Joint Labor Petition.

III. Section-by-Section Analysis

Part 217—[AMENDED]

Section 217.9 Program of Operational Tests and Inspections; Recordkeeping

FRA is amending four paragraphs of this section to delay certain applicability dates. In the preamble section titled ''Implementation Dates,'' FRA explains the basis for amending each of these compliance deadlines. In summary, FRA considered the petitions which suggested that, due to the routine most railroads use to schedule training during the first quarter of each calendar year, many railroads might have rushed through implementation merely to meet the deadline without regard for the program's likely effectiveness. FRA is amending the applicability dates in this section because we would prefer to provide each railroad with a reasonable opportunity to come into compliance with an effective amended program of operational tests and inspections, rather than to have compliance that is technically timely but ineffective.

The introductory text of paragraph (b) is amended to make the requirements contained in this paragraph (b) applicable beginning January 1, 2009. As the applicability date was previously July 1, 2008, the amendment extends the deadline for compliance by six months.

Paragraph (c)(1) requires the program to provide for operational testing and inspection under the various operating conditions on the railroad. The applicability date of this paragraph has been amended, so that on or after January 1, 2009, each railroad shall be required to amend its program to ''address with particular emphasis those operating rules that cause or are likely to cause the most accidents or incidents, such as those accidents or incidents identified in the quarterly reviews, six month reviews, and the annual summaries as required under paragraphs (e) and (f) of this section, as applicable.'' As the applicability date was previously July 1, 2008, the amendment extends the deadline for compliance by six months.

Paragraph (c)(6) requires the program show the railroad's designation of an officer to manage the program at each level of responsibility (division or system, as applicable). The applicability date of this paragraph has been amended, so that compliance with it is not required until January 1, 2009. As the applicability date was previously July 1, 2008, the amendment extends the deadline for compliance by six months.

Paragraph (e) requires each railroad to do reviews of its program of operational tests and inspections at certain specified periodic intervals. There are two applicability dates in introductory paragraph (e) and both dates have been amended to provide railroads with additional time to comply. Introductory paragraph (e) is amended so that the requirements in paragraph (e) apply to each Class I railroad and the National Railroad Passenger Corporation beginning April 1, 2009, and to all other railroads subject to this paragraph beginning July 1, 2009. Thus, each Class I railroad and the National Railroad Passenger Corporation are being provided an additional ten months to comply with the requirements in paragraph (e) and all other railroads subject to this paragraph are being provided an additional six months to comply.

Part 218—[AMENDED]

Section 218.93 Definitions

A definition of *departure track* is added to this section because this term is used in added paragraph (e)(5) to § 218.99. A departure track is a track located in a classification yard where rolling equipment is placed and made ready for an outgoing train movement. Thus, a departure track is typically the last type of track that cars will be on in the yard before the cars are completely assembled as a train and are ready to leave the confines of the classification yard. The ''classification yard'' is a term used to describe the greater yard area that contains, but is not limited to, run-through tracks, van yard tracks that are used for trailers on flat cars or containers on flat cars (tofc/cofc), car repair tracks, locomotive servicing tracks, repair-in-place (rip) tracks, receiving tracks, bowl or classification tracks, and departure tracks. Some railroads have added shove light systems to departure tracks to aid train crews shoving or pushing large cuts of cars onto departure tracks; i.e., a person observing the shove light will be notified when the circuited end of the track is occupied without actually viewing the circuited end of the track.

Section 218.95 Instruction, Training, and Examination

Paragraph (a) requires that each railroad maintain a written program that will qualify its employees for compliance with operating rules implementing the requirements of this subpart to the extent these requirements are pertinent to the employee's duties. FRA is amending this paragraph to require establishment and continued maintenance of the program beginning no later than January 1, 2009. As the applicability date was previously July 1, 2008, the amendment extends the deadline for compliance by six months.

Paragraphs (a)(3) and (a)(4) are also being amended to provide additional time to implement this subpart. Paragraph (a)(3) is amended to require that each employee performing duties subject to the requirements in this subpart shall be initially qualified prior to July 1, 2009. As the applicability date for paragraph (a)(3) was previously January 1, 2009, the amendment extends the deadline for compliance by six months. Paragraph (a)(3) is also amended by eliminating the requirement that ''employees hired between April 14, 2008 and January 1, 2009, and all employees thereafter required to perform duties subject to the requirements in this subpart shall be qualified before performing duties subject to the requirements in this subpart.'' The elimination of this requirement follows from the decision to delay implementation of the program in paragraph (a) to January 1, 2009. The program implementation date is being delayed so that railroads will have time to adequately prepare a written program of training. As FRA has accepted AAR and APTA's reasons for delaying implementation of the program, it seems logical to provide railroads additional time to train both the employees hired prior to the effective date of the rule as well as the newly hired employees.

Similarly, the applicability date in paragraph (a)(4) is amended to require that, beginning July 1, 2009, no employee shall perform work requiring compliance with the operating rules implementing the requirements of this subpart unless qualified on these rules within the previous three years. As the applicability date for paragraph (a)(4) was previously January 1, 2009, the amendment extends the deadline for compliance by six months. Thus, as of July 1, 2009, each employee performing work subject to this subpart is required

to be qualified regardless of when the employee was hired.

Section 218.99 Shoving or Pushing Movements

Paragraph (e)(5) is added to permit each railroad the option of using a shove light system in lieu of point protection under 49 CFR 218.99(b)(3), as long as certain specified conditions are met. In section II. B. of the preamble, titled ''Shove Lights,'' FRA explains why it is permitting railroads to choose this option. In summary, FRA reviewed initial rail equipment accident/incident records over a recent twenty-six month period that suggested railroads have safely conducted shoving or pushing movements on departure tracks that utilize shove light systems without a point protection requirement. FRA conducted observations of 34 locations where shove light or radio systems were in operation and found that certain best practices increased the likelihood that the operation could be conducted safely. FRA has promulgated the best practices into requirements that allow a railroad to exercise this operational exception. In addition, FRA has determined that systems based on radio signals alone are not as safe as those that contain a visual display. Consequently, the operational exception uses the term ''shove light system'' which is intended to descriptively exclude the use of a radio system that does not utilize a light.

Paragraph (e)(5)(i) requires that the shove light system is demonstrated to be failsafe. The safety concern is that, without a specific requirement, some railroads might try to implement technology that is not demonstrated to be safe and therefore provides a false sense of protection to rail employees. Fortunately, most shove light arrangements appear to utilize traditional signal circuits which by design fail safe. (For analogous requirements applicable to track circuits and occupancy display in block signal territory see, *e.g.*, 49 CFR 236.5, 236.51.) Although the present rule in no way dictates the technology employed, it does require that it be failsafe in operation. (For principles pertinent to evaluating innovative detection technologies, see Appendix C to part 236.) In order to demonstrate that the system is failsafe, FRA would expect that when the system is not working properly, it would produce the least favorable aspect—indicating that the movement should immediately be stopped or, if not yet begun, not started.

Paragraph (e)(5)(ii) requires that the shove light system be arranged to display a less favorable aspect when the circuited section of the track is occupied. If the shove light system has only a single light, the light will turn off, i.e., go dark, when the circuited section of the track is occupied. If the shove light system has multiple lights or a single light with the ability to display multiple aspects or colors, the light will turn from a favorable aspect to a less favorable aspect when the circuit is first occupied, and later turn to a more restrictive aspect as the circuited track reaches full occupancy. Of course, shove light systems with multiple lights may simply go from a favorable aspect, e.g., green, to a less favorable aspect, e.g., red, in order to meet the requirement of this paragraph.

Paragraph (e)(5)(iii) requires that written procedures be adopted and complied with that provide for a reliable means of determining track occupancy prior to commencing a shoving or pushing movement. The preamble section titled ''Shove Lights'' contains a description of various procedures many railroads have already established for departure tracks within departure yards equipped with shove light systems. The establishment of procedures is a way to create a uniform method of leaving a car or cut of cars on a departure track safely, thus permitting the yardmaster or next crew entering to know that the entire length of a particular departure track is not clear. Some railroads may choose to institute procedures that aid in tracking cars, either in writing, computer inventory, GPS tracking, or other electronic tracking. FRA is not requiring that all railroads must adopt and comply with a particular set of procedures. However, FRA believes these types of procedures contribute to the overall safety record of departure tracks utilizing shove lights and that such procedures must be established in writing so that all employees working in the departure yard can be expected to fully understand the operation. When FRA conducts inspections of these departure yards, we intend to review these procedures to ensure that any particular procedure, or lack thereof, does not create an undue safety risk and that the departure yard operation utilizing the shove light system is managed in a safe manner.

Paragraph (e)(5)(iv) requires that the departure track be designated in writing. This is an important requirement because it is an exception to providing point protection and it is therefore imperative that employees know specifically on which tracks the exception applies. FRA is promulgating this requirement even though we are unaware of shove light systems being installed on other than designated departure tracks. The requirement in this paragraph is intended to prevent a railroad from installing shove lights on yard tracks that are not departure tracks and attempting to circumvent the point protection requirements under paragraph (b)(3) of this section.

Paragraph (e)(5)(v) requires that the track be under the exclusive and continuous control of a yardmaster or other qualified employee. FRA's recent observations of departure tracks at major railroad classification yards, described above, found that a universal best practice is to have an employee, typically a yardmaster, who controls all movements in and out of the departure tracks. Without such an employee, there would likely not be any person who would be tracking movements into or out of the departure tracks, and there would not be anyone who could reliably relay information to train crewmembers who need to know the status of a particular departure track.

The operational exception in paragraph (e)(5) differs from the other numbered exceptions in paragraph (e) because, although introductory paragraph (e) states that ''[a] railroad does not need to comply with paragraphs (b) through (d) of this section in the following circumstances,'' the rule excepting shove lights does include some requirements within paragraphs (b) through (d). For instance, paragraph (e)(5)(vi) requires that ''[t]he train crewmember or other qualified employee directing the shoving or pushing movement complies with the general movement requirements contained in paragraphs (b)(1) and(b)(2) of this section.'' Thus, even though a shove light system may be used, this paragraph requires that employees conduct a proper job briefing under paragraph (b)(1) and that the employee directing the movement not engage in any task unrelated to the oversight of the shoving or pushing movement under paragraph (b)(2). Similarly, paragraph (e)(5)(vii) requires that ''[a]ll remote control shoving or pushing movements comply with the requirements contained in paragraph (c)(1) of this section.'' Hence, remote control operations utilizing shove lights are not excused from the requirement that either the remote control operator or a crewmember visually determine the direction the equipment moves, and, in the case of a crewmember making the observation, that the operator is promptly informed before continuing the movement.

Paragraph (e)(5)(viii) requires that the shove light system be continuously illuminated when the circuited section of the track is unoccupied. FRA is including this requirement to ensure

that the employee observing the shove light is always viewing a lit aspect when the circuited section of the track is unoccupied. To allow otherwise would mean that a shove light system with a single aspect shove light could remain dark until it lit up when the circuited section of the track is occupied. Such an arrangement would not be failsafe if the light bulb failed. In arranging a failsafe system, railroads that utilize a multiple aspect shove light system will need to address each possible scenario for one or more light bulb or aspect failures. If the system has multiple aspects and a bulb or aspect failed, an employee viewing the shove light should be able to tell that the system is not continuously illuminating a proper aspect. If the system fails to continuously illuminate, the operational exception under paragraph (e)(5) would no longer be available and the movement would be required to stop immediately. Thus, the safest course of action is required when there is a technological failure such as the system fails to continuously illuminate.

IV. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This action has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). The original final rule was determined to be non-significant. Furthermore, the amendments contained in this action are not considered significant because they generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule. These amendments, additions, and clarifications will have a minimal net effect on FRA's original analysis of the costs and benefits associated with the final rule.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. FRA certifies that this action is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272. Because the amendments contained in this document generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations resulting from this action.

C. Paperwork Reduction Act

The information collection requirements in the agency's response to petitions of reconsideration of this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
217.7—Operating Rules; Filing and Recordkeeping:					
—Filing rules, timetables, and special instructions.	1 New Railroad	1 submission	1 hour	1	$43
—Amendments to operating rules, timetables, and timetable special instructions by Class I, Class II, Amtrak, and Commuter Railroads.	55 Railroads	165 amendments	20 minutes	55	2,365
—Class III and Other Railroads: Copy of Current Operating Rules, Timetables, and Special Instructions.	20 New Railroads	20 submissions	55 minutes	18	774
—Class III Railroads: Amendments to operating rules.	632 Railroads	1,896 amendments	15 minutes	474	20,382
217.9—Program of Operational Tests:					
—Railroad and railroad officer testing responsibilities: Field Training.	687 Railroads	4,732 training sessions.	8	37,856	1,892,800
—Written records of officer testing qualifications.	687 Railroads	4,732 records	2 minutes	158	0 (Incl. RIA)
—Written program of operational tests/inspections.	20 New Railroads	20 programs	9.92	198	8,514
—Amendments to operational tests/insp. programs.	55 Railroads	165 amendments	1.92	317	13,631
—Records of individual tests/inspections.	687 Railroads	9,180,000 rcds	5 minutes	765,000	38,250,000
—Review of tests/inspections/adjustments to the program of operational tests—Quarterly reviews.	687 Railroads	37 reviews	1 hour	37	0 (Incl. RIA)
—Officer designations & Six Month reviews.	687 Railroads	37 designations + 74 reviews.	5 seconds + 1 hour.	74	0 (Incl. RIA)
—*Passenger Railroads:* Officer designations & Six-month reviews.	20 Railroads	20 designation + 34 reviews.	5 seconds + 1 hour.	34	0 (Incl. RIA)
—Records retention: Periodic reviews.	687 Railroads	589 review rcds	1 minute	10	0 (Incl. RIA)

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Annual summary on operational rests/inspections—Summary records.	37 Railroads	37 summary rcds.	61 minutes	38	1,634
—FRA disapproval of operational testing/insp. program: Railroad response to disapproval.	687 Railroads	20 responses	1 hour	20	1,460
—Amended programs as a result of FRA.	687 Railroads	20 amended	30	10	730
217.11—Program of Instructions on Operating Rules					
—Railroads instructions of employees.	687 Railroads	130,000 instr. employees.	8	1,040,000	52,000,000
—Current copy of employee periodic instruction prog.	20 New Railroads	20 programs	8	160	6,880
—Amendments to current employee instruction prog.	687 Railroads	220 amendments	.92 hour	202	8,686
218.95—Instruction, Training, and Examination:					
—Records of instruction, training, examination.	687 Railroads	98,000 records	5 minutes	8,167	351,181
—FRA disapproval of program: Railroad responses.	687 Railroads	50 submissions	1 hour	50	2,150
—Amended programs	687 Railroads	20 amended docs	30 minutes	10	730
218.97—Good Faith Challenge Procedure:	687 Railroads	687 procedures	2 hours	1,374	0 (Incl. RIA)
—Copies to employees of good faith procedures.	687 Railroads	130,000 copies	6 minutes	13,000	0 (Incl. RIA)
—Copies of amendments to good faith procedures.	687 Railroads	130,000 copies	3 minutes	6,500	0 (Incl. RIA)
—Good faith challenges to railroad directives.	98,000 employees	15 challenges	10 minutes	3	0 (RIA)
—Resolution of challenges	687 Railroads	15 responses	5 minutes	1	0 (RIA)
—Direct order to proceed procedures: Immediate review by railroad testing officer/employer.	687 Railroads	5 reviews	15 minutes	1	0 (RIA)
—Documentation of employee protests to direct order.	687 Railroads	10 protest docs	15 minutes	3	0 (RIA)
—Copies of protest documentation	687 Railroads	20 copies	1 minute	.33	0 (RIA)
—Further review by designated railroad officer.	687 Railroads	3 reviews	15 minutes	1	0 (RIA)
—Employee requested written verification decisions.	687 Railroads	10 decisions	10 minutes	2	88
—Recordkeeping/Retention—Copies of written procedures.	687 Railroads	760 copies	5 minutes	63	2,709
—Copies of good faith challenge verification decisions.	687 Railroads	20 copies	5 minutes	2	86
218.99—Shoving or Pushing Movements:					
—Required operating rule compliant with this section.	687 Railroads	687 rule modific	1 hour	687	0 (Incl. RIA)
—General Movement Requirements: Job briefings.	100,000 RR employees.	60,000 briefings	1 minute	1,000	50,000
—Point Protection: Visual determination of clear track and corresponding signals or instructions.	100,000 RR employees.	87,600,000 deter/instructions + 87,600,000 signals.	1 minute	2,920,000	128,480,000
—Remote Control Movements: Confirmations by Crew.	100,000 RR employees.	876,000 confirm	1 minute	14,600	642,400
—Remote Control zone, exceptions to point protection: Determination/Communication track is clear.	100,000 RR employees.	876,000 deter/communication.	1 minute	14,600	642,400
—*Operational exceptions:*					
—Dispatcher permitted movements that are verified.	6,000 RR Dispatchers.	30,000 permitted movements.	1 minute	500	22,000
[NEW REQUIREMENTS]					

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Written procedures that are adopted/complied with to determinutee track occupancy prior to shoving/pushing movement.	687 Railroads	41 procedures	30 minutes	42	903
—The track is designated in writing	687 Railroads	41 designated track locations.	30 minutes	42	903
218.101—Leaving Equipment in the Clear:					
—Operating Rule that Complies with this section.	687 Railroads	687 amended op. rules.	30 minutes	344	0 (Incl. RIA)
218.103—Hand-Operated Switches and Derails:					
—Operating Rule that Complies with this section.	687 Railroads	687 amended op. rules.	60 minutes	687	0 (Incl. RIA)
—Minimum requirements for adequate job briefing.	632 Railroads	632 modif rules	60 minutes	632	0 (RIA)
—Actual job briefings conducted by employees operating hand-operated main track switches.	632 Railroads	1,125,000 brfngs	1 minute	18,750	825,000
218.105—Additional Job Briefings for hand-operated main track switches:	687 Railroads	60,000 briefings	1 minute	1,000	0 (Incl. RIA)
—Exclusive track occupancy: Report of position of main track switches and conveyance of switch position.	687 Railroads	100,000 reports + 100,000 convey.	1 minute	3,334	0 (RIA)
—Releasing authority limits: Acknowledgments and verbal confirmations of hand-operated main track switches.	6,000 RR Dispatchers.	60,000 reports + 60,000 confirm.	30 sec. + 5 sec	583	0 (Incl. RIA)
218.109—Hand-operated fixed derails—Job.	687 Railroads	562,500 brfngs	30 seconds	4,688	234,400

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292 or Ms. Nakia Poston at 202–493–6073, or via e-mail at *robert.brogan@dot.gov* or *nakia.poston@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Any comments should be sent to: The Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, att: FRA Desk Officer. Comments may also be sent via e-mail to OMB at the following address: *oira_submissions@omb.eop.gov.*

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the proposed regulation. Where a regulation has Federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This is an action with preemptive effect. Subject to a limited exception for essentially local safety hazards, its requirements will establish a uniform Federal safety standard that must be met, and State requirements covering the same subject are displaced, whether those standards are in the form of State statutes, regulations, local ordinances, or other forms of state law, including State common law. Preemption is addressed in §§ 217.2 and 218.4, both titled ''Preemptive effect.'' As stated in the corresponding preamble language for §§ 217.2 and 218.4 in the original final rule, section 20106 of Title 49 of the United States Code provides that all

regulations prescribed by the Secretary related to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety or security hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. This is consistent with past practice at FRA, and within the Department of Transportation.

FRA has analyzed this action in accordance with the principles and criteria contained in Executive Order 13132. FRA notes that the above factors have been considered throughout the development of this rulemaking both internally and through consultation within the RSAC forum, as described in Section I of this preamble. After the Railroad Operating Rules Working Group failed to reach a consensus recommendation on the NPRM, FRA reported the Working Group's unofficial areas of agreement and disagreement to the RSAC. After publication of the NPRM, FRA permitted the Working Group to meet and discuss the comments received; some consensus on the comments was derived and forwarded to the RSAC where it was ratified as a recommendation to the FRA. The RSAC has as permanent voting members two organizations representing State and local interests: AASHTO and ASRSM. The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the Federalism implications of this rulemaking from these representatives or from any other representative. States and other governments were afforded opportunity to consult by virtue of the NPRM and comment period, and the agency's procedures permitting petitions for reconsideration.

For the foregoing reasons, FRA believes that this action is in accordance with the principles and criteria contained in Executive Order 13132.

E. Environmental Impact

FRA has evaluated this action in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) currently $128,100,000 in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This action would not result in the expenditure, in the aggregate, of $128,100,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this action in accordance with Executive Order 13211. FRA has determined that this action is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

H. Public Proceedings

FRA has not provided additional notice and request for public comment prior to making the amendments contained in this rule. FRA concluded that such notice and comment were impractical, unnecessary and contrary to the public interest since FRA is, for the most part, only making minor technical changes in response to requests for reconsideration of issues that were previously the subject of detailed notice and extensive comment in the development of the initial final rule in this proceeding.

Certain of the amendments are so critical to the effective implementation of this rule that the delay that a notice and comment period would cause would clearly be contrary to the public interest in railroad safety. For example, the amendments delaying certain implementation of the rule need to go into effect immediately or some of the implementation dates in the initial final rule would go into effect before the amendments would. If the amendments were not allowed to go into effect immediately, many railroads would be rushing to develop and implement training and testing programs, and the quality of the programs and the training would suffer. In addition, an exemption or relief from a restriction is provided by allowing railroads to utilize existing shove light systems without establishing point protection. If this exemption is not immediately placed in effect, some railroads may require an employee to ride the side of a car or walk along a departure track equipped with shove lights, thereby increasing the employee's risk of an injury. Under these circumstances, FRA has concluded that the rule may be made effective immediately. 5 U.S.C. 553(d).

I. Privacy Act

Anyone is able to search the electronic form of all comments or petitions for reconsideration received into any of FRA's dockets by the name of the individual submitting the comment or petition for reconsideration (or signing the comment or petition for

reconsideration, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

List of Subjects

49 CFR Part 217

Penalties, Railroad safety, and Reporting and recordkeeping requirements.

49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, and Reporting and recordkeeping requirements.

The Final Rule

■ For the reasons discussed in the preamble, FRA amends parts 217 and 218 of Title 49, Code of Federal Regulations as follows:

PART 217—[AMENDED]

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Section 217.9 is amended by revising the introductory text of paragraph (b), paragraphs (c)(1), (c)(6), and the introductory text of paragraph (e) to read as follows:

§ 217.9 Program of operational tests and inspections; recordkeeping.

* * * * *

(b) *Railroad and railroad testing officer responsibilities.* The requirements of this paragraph (b) are applicable beginning January 1, 2009.

* * * * *

(c) * * *

(1) Provide for operational testing and inspection under the various operating conditions on the railroad. As of January 1, 2009, the program shall address with particular emphasis those operating rules that cause or are likely to cause the most accidents or incidents, such as those accidents or incidents identified in the quarterly reviews, six month reviews, and the annual summaries as required under paragraphs (e) and (f) of this section, as applicable;

* * * * *

(6) As of January 1, 2009, identify the officer(s) by name, job title, and, division or system, who shall be responsible for ensuring that the program of operational tests and inspections is properly implemented. The responsibilities of such officer(s) shall include, but not be limited to, ensuring that the railroad's testing officers are directing their efforts in an appropriate manner to reduce accidents/incidents and that all required reviews and summaries are completed. A railroad with divisions shall identify at least one officer at the system headquarters who is responsible for overseeing the entire program and the implementation by each division.

* * * * *

(e) *Reviews of tests and inspections and adjustments to the program of operational tests.* This paragraph (e) shall apply to each Class I railroad and the National Railroad Passenger Corporation beginning April 1, 2009 and to all other railroads subject to this paragraph beginning July 1, 2009.

* * * * *

PART 218—[AMENDED]

■ 3. The authority citation for part 218 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 4. Section 218.93 is amended by adding a definition of ''departure track'' in alphabetical order to read as follows:

§ 218.93 Definitions.

* * * * *

Departure track means a track located in a classification yard where rolling equipment is placed and made ready for an outgoing train movement.

* * * * *

■ 5. Section 218.95 is amended by revising the introductory text of paragraph (a), and paragraphs (a)(3) and (a)(4) to read as follows:

§ 218.95 Instruction, training, and examination.

(a) *Program.* Beginning January 1, 2009, each railroad shall maintain a written program of instruction, training, and examination of employees for compliance with operating rules implementing the requirements of this subpart to the extent these requirements are pertinent to the employee's duties. If all requirements of this subpart are satisfied, a railroad may consolidate any portion of the instruction, training or examination required by this subpart with the program of instruction required under § 217.11 of this chapter. An employee who successfully completes all instruction, training, and examination required by this written program shall be considered qualified.

* * * * *

(3) *Implementation schedule for employees, generally.* Each employee performing duties subject to the requirements in this subpart shall be initially qualified prior to July 1, 2009.

(4) Beginning July 1, 2009, no employee shall perform work requiring compliance with the operating rules implementing the requirements of this subpart unless qualified on these rules within the previous three years.

* * * * *

■ 6. Section 218.99 is amended by adding a new paragraph (e)(5) to read as follows:

§ 218.99 Shoving or pushing movements.

* * * * *

(e) * * *

(5) Shoving or pushing movements made in the direction of the circuited end of a designated departure track equipped with a shove light system, if all of the following conditions are met:

(i) The shove light system is demonstrated to be failsafe;

(ii) The shove light system is arranged to display a less favorable aspect when the circuited section of the track is occupied;

(iii) Written procedures are adopted and complied with that provide for a reliable means of determining track occupancy prior to commencing a shoving or pushing movement;

(iv) The track is designated in writing;

(v) The track is under the exclusive and continuous control of a yardmaster or other qualified employee;

(vi) The train crewmember or other qualified employee directing the shoving or pushing movement complies with the general movement requirements contained in paragraphs (b)(1) and (b)(2) of this section;

(vii) All remote control shoving or pushing movements comply with the requirements contained in paragraph (c)(1) of this section; and

(viii) The shove light system is continuously illuminated when the circuited section of the track is unoccupied.

Issued in Washington, DC on June 10, 2008.

Joseph H. Boardman,

Administrator.

[FR Doc. 08–1354 Filed 6–11–08; 11:24 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. 2008–0111]

RIN 2127–AK21

Anthropomorphic Test Devices; ES–2re Side Impact Crash Test Dummy 50th Percentile Adult Male

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

ACTION: Final rule, response to petitions for reconsideration, technical amendment.

SUMMARY: This final rule responds to petitions for reconsideration of a December 6, 2006 final rule establishing in 49 CFR part 572 a new mid-size adult male side crash test dummy, called the ''ES–2re'' test dummy. The petitions were submitted by the Alliance of Automobile Manufacturers, First Technology Safety Systems, and Denton ATD. In response to the petitions, this document slightly revises the specifications for conducting the neck assembly qualification test, narrows the tolerances for the tuning spring rates for the dummy's thorax, revises performance corridors for the full body thorax test, corrects cross-references in the Part 572 regulatory text and makes minor changes to the drawing package and user's manual for the test dummy.

DATES: This final rule is effective August 15, 2008. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 15, 2008. If you wish to petition for reconsideration of this rule, your petition must be received by July 31, 2008.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC, 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Ms. Kristin Kirk, NHTSA Office of Crashworthiness Standards (telephone 202–493–0516). For legal issues, you may call Ms. Deirdre Fujita, NHTSA Office of Chief Counsel (telephone 202–366–2992) (fax 202–366–3820). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

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I. Introduction

This final rule responds to petitions for reconsideration of a final rule (71 FR 75304; Docket No. NHTSA–2004–25441) that was published on December 14, 2006, amending 49 CFR Part 572 to add specifications and qualification requirements in Subpart U for a new mid-size adult male side impact test dummy, called the ''ES–2re'' test dummy, for use in Federal Motor Vehicle Safety Standard (FMVSS) No. 214 (''Side impact protection''). The notice of proposed rulemaking (NPRM) preceding the December 14, 2006 final rule was published on September 15, 2004 (69 FR 55550; Docket 18864; reopening of comment period, January 12, 2005, 70 FR 2105).

The ES–2re is technically superior to both the SID–HIII 50th percentile adult male test dummy (49 CFR Part 572, subpart M) currently used in the optional pole test of FMVSS No. 201 and the side impact New Car Assessment Program tests, and the SID 50th percentile adult male test dummy (49 CFR Part 572, subpart F) now used in the moving deformable barrier (MDB) test of FMVSS No. 214. The ES–2re can be instrumented with a wide array of sensors to better predict a wider range of injury potential than any other currently available mid-size male side impact test dummy. It can assess the potential for head injury (measuring the resultant head acceleration, which is used to calculate the Head Injury Criterion (HIC)); thoracic injuries in terms of spine and rib accelerations and rib deflections; abdominal injuries through three load cells to assess the magnitude of lateral and oblique forces; pelvic injuries, and other injuries.

The use of the ES–2re test dummy in FMVSS No. 214 was discussed in and made part of a final rule upgrading FMVSS No. 214 (49 CFR 571.214) published on September 11, 2007 (72 FR 51908; Docket No. NHTSA–29134).[1] The final rule added a dynamic pole test to FMVSS No. 214, to supplement the MDB test currently in the standard. In the dynamic pole test, a vehicle is propelled sideways into a rigid pole at an angle of 75 degrees, at any speed up to 32 km/h (20 mph). Compliance with the pole test will be determined in two test configurations, one using the ES–2re test dummy representing mid-size adult males and the other using a test dummy representing small adult females.[2] The final rule required vehicles to protect against head, thoracic and other injuries as measured by the two test dummies. The final rule also specified using the dummies in FMVSS No. 214's MDB test, which simulates a vehicle-to-vehicle, ''T-bone'' type intersection crash.

II. Summary of ES–2RE Part 572 Final Rule

For any test dummy to be a useful test device in a compliance or vehicle rating setting, responses to controlled inputs must be reproducible and repeatable. The December 14, 2006 ES–2re final rule specified a qualification process for the ES–2re dummy, *i.e.*, a series of specified component and whole body-level tests, to verify that a test dummy's response measurements fall within prescribed ranges. The tests and response ranges (or performance corridors) for the ES–2re, specified in 49

[1] The September 11, 2007 final rule fulfilled the mandate of Section 10302 of the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,'' (SAFETEA–LU), *Pub. L.* 109–59 (Aug. 10, 2005; 119 Stat. 1144). Section 10302(a) of SAFETEA–LU provides:

Sec. 10302. Side-Impact Crash Protection Rulemaking.

(a) Rulemaking.—The Secretary shall complete a rulemaking proceeding under chapter 301 of title 49, United States Code, to establish a standard designed to enhance passenger motor vehicle occupant protection, in all seating positions, in side impact crashes. The Secretary shall issue a final rule by July 1, 2008.

We received petitions for reconsideration of the FMVSS No. 214 final rule and will be publishing our response to those petitions at a future date.

[2] NHTSA published a final rule adding the specifications for the small female dummy (SID–IIsD) to 49 CFR Part 572 on December 14, 2006 (71 FR 75342; Docket No. NHTSA–25442). We received petitions for reconsideration of the final rule and expect to publish our response to those petitions in 2008.

CFR Part 572 Subpart U, ensure that the dummy's responses to controlled inputs are reproducible and repeatable, thus assuring full and accurate evaluation of occupant injury risk in vehicle tests. The test procedures and performance specifications for qualification of the ES–2re as set forth in the December 14, 2006 final rule established performance levels for the dummy's head assembly, neck assembly, lumbar spine, shoulder assembly, thorax (upper torso) assembly, abdomen assembly and pelvis. (An overview of the test requirements is provided in Appendix A to this preamble.)

Today's document relates to the following test procedures and performance specifications of the final rule:

- *Neck Assembly:* The neck-headform assembly of the ES–2re is attached to a specified pendulum which is released so that it contacts a decelerating mechanism at an impact velocity of 3.4 meters per second (m/s). As the pendulum decelerates, its velocity must fall within time-dependent velocity corridors described in the regulatory text, and at zero velocity, the pendulum must be vertical within ±1 degree. The rotation of the neck-headform in time is measured to evaluate the dummy's performance.
- *Lumbar Spine:* The lumbar spine is tested in a similar fashion as the neck. The spine is assembled with the headform assembly and attached to a specified pendulum. The pendulum is then released from a height so that it impacts the decelerating mechanism at a velocity of 6.05 m/s. The deceleration of the pendulum is defined by time-dependent velocity corridors. As with the neck assembly test, the rotation of the lumbar spine-headform assembly in time is measured and must fall within the specified response corridors.
- *Thorax (upper torso) Assembly:* Two procedures are specified to test the response of the ES–2re thorax. The first is an individual rib drop test. In this test, each rib module is mounted in a test fixture and a guided mass is dropped from two different heights to impact the rib. For each drop height, the resulting deflection of the rib is measured and used to determine the rib's suitability for compliance testing. The second thorax test is a full-body test performed on a seated dummy with its complete set of ribs. This test involves impacting the side of a seated dummy at the centerline of the middle rib, at a velocity of 5.5 m/s ± 0.1 m/s. Response ranges used to qualify the dummy are defined for the deflections of the upper, middle and lower ribs, and for the maximum force of the impactor at 6 ms or more after time zero.

III. Petitions for Reconsideration

The Alliance of Automobile Manufacturers (Alliance), Denton ATD (Denton) and First Technology Safety Systems (FTSS) petitioned for reconsideration of the December 14, 2006 final rule. The petitioners generally supported the incorporation of the ES–2re into 49 CFR Part 572,[3] but had concerns with engineering aspects of the Part 572 specifications and with the drawings incorporated by reference into the regulation. The suggestions of each of the petitioners are summarized below:

a. The Alliance petitioned to specify the use and thickness of aluminum honeycomb in the test procedures for assessing the neck assembly and the lumbar spine. The petitioner also asked NHTSA to revise specifications for the thorax assembly tolerances for rib module tuning springs, to eliminate the thorax individual rib drop test and to reduce the speed for the full body thorax test. The petitioner also suggested corrections to cross-references and typographical errors in the Part 572 regulatory text.

b. Denton also petitioned to specify the use of honeycomb material in the neck qualification test procedure. In addition, the petitioner requested that NHTSA eliminate the full body thorax impact test because of concerns that the test reduces the durability of the dummy, and because Denton believed ''it impossible for the certification test to be a repeatable and reproducible evaluation of the dummy.'' Alternatively, Denton suggested that if NHTSA retained the full body thorax impact test, that the agency adopt new corridors for the test developed by the Society of Automotive Engineers (SAE) Dummy Testing Equipment Subcommittee (DTESC) of the Human Biomechanics and Simulation Standards Committee. Denton also identified portions of the regulatory text and a number of drawings incorporated by reference into Part 572 that the petitioner believed needed correction.

c. FTSS requested that NHTSA consider data for the full-body thorax impact test from FTSS, Denton and GM and revise the probe force after 6 millisecond specification. FTSS also identified a number of drawings that the petitioner believed needed correction.

[3] The Alliance stated that it believes that WorldSID is the most appropriate side impact dummy representing the 50th percentile adult male, but that ''until WorldSID is placed into Part 572, the Alliance generally supports the interim adoption of the ES–2re.''

IV. Response to the Petitions

In response to the petitions for reconsideration of the December 14, 2006 final rule, this document slightly revises the specifications for conducting the neck assembly qualification test, narrows the tolerances for the tuning spring rates for the dummy's thorax, revises performance corridors for the full body thorax test, corrects cross-references and typographical errors in the Part 572 regulatory text and makes minor changes to the drawing package and NHTSA user's manual (Procedures for Assembly, Disassembly and Inspection) for the dummy.

a. Neck Assembly Qualification Test

The Alliance believed that the requirement in § 572.183(c) that at zero velocity, the pendulum must be vertical within ±1 degree ''is broad and that it would not be possible to fail this requirement as long as a 3 inch piece of aluminum honeycomb is used.'' The Alliance stated that ''it would be more precise to simply state in the regulation the need to utilize a 3-inch thick piece of aluminum honeycomb, rather than include the more complicated specification for verticality of the pendulum beam.'' Denton also petitioned that a 3-inch piece of aluminum honeycomb should be specified as the decelerating mechanism for the neck pendulum in place of the current angular position specification. Denton claimed that retaining the specification for ±1 degree from vertical at 0 m/s would only ''add expense and difficulty to the test with no value,'' as labs would have to measure the angular position of the pendulum for every test. This petitioner believed that the angular position specification came from ''ES–2 user's manuals from TNO and FTSS,'' but it was ''originally intended by TNO to show that 3 inch thick honeycomb should be used for this test.''

Agency Response

We generally concur with the request. The requirement to measure the pendulum to ±1 degree from vertical was taken from the manufacturer's user's manual for the dummy. While this measurement would not require a great amount of effort to attain, we conclude that its removal from the test procedure would not affect dummy responses. Additionally, for all Hybrid III dummies, as well as for the SID–IIsD dummy, there is no requirement for the vertical alignment of the pendulum at zero velocity, nor is there a specified honeycomb thickness. All of these dummies reference the pendulum in 49 CFR Part 572 Subpart E (Figure 22),

which only specifies the honeycomb density and the horizontal distance between the pivot of the pendulum and the honeycomb face. By maintaining consistency between test procedures for different dummies, the familiarity of lab technicians with the instructions for the dummy is increased, as will be the ease and efficiency of conducting tests.

Accordingly, NHTSA has decided to remove the requirement for the pendulum to be vertical ±1 degree at zero velocity, as petitioned. However, we are not adding a specification for honeycomb thickness, since laboratories may have alternative pendulum designs that achieve the desired deceleration. These changes will allow for the ES–2re neck qualification test to be consistent with those for all other currently-used dummies.

b. Lumbar Spine

Similar to its recommendation to specify the neck pendulum decelerating mechanism as a 3-inch thick piece of aluminum honeycomb, the Alliance also petitioned to add to § 572.187(b)(3) a specification that the decelerating mechanism should have a thickness of 6 inches.

Agency Response

We do not agree to this request. Honeycomb thickness is not specified for any pendulum qualification tests for the Hybrid III family of dummies or for the SID–IIsD. The deceleration of the pendulum in neck or lumbar tests is defined by the velocity-time profile provided in the regulatory text, thus it is unnecessary to specify a honeycomb thickness.

c. Thorax Assembly, Rib Drop Test

1. Use of the Individual Rib Drop Test

The Alliance petitioned to delete the rib drop test because ''it may not sufficiently identify poor performing ribs.'' The petitioner referred to Denton data from six rib drop tests (three tests at 3 meters per second (m/s) and three at 4 m/s).

Agency Response

We are denying the request. It is not evident how the Denton results supported the request, and the petitioner did not explain its point. The six results provided by the Alliance all fell within the displacement corridors of the NPRM and the final rule. Presumably, the Alliance believes that some or all of these ribs should have failed this test as ''poor'' performers. However, no indication was given that these ribs were problematic, or that they should not have met the requirements of the rib drop test.

While analyzing the petitioner's data to try to understand the Alliance concern, we noticed that although the tests were conducted after the issuance of the final rule, the procedures used by the petitioner followed the NPRM specifications (which specified impact velocities) rather than the final rule's procedures (which specified drop heights). For all six tests, drop heights (which the agency calculated from the provided impact velocities) did not meet the specifications of the final rule.[4] Assuming that the Alliance was trying to illustrate that tests conducted outside the specifications of the final rule could still meet the deflection corridors, we still do not concur that this occurrence indicates that the test is deficient. Because of variation in dummy responses, the rib response at drop heights close to the final rule specifications may or may not also fall within the deflection corridor. No source of support for the Alliance petition could be identified in the provided data.

The individual rib drop test was originally specified in the manufacturer's user's manual and has received support throughout the rulemaking process. The Alliance's test results do not appear to demonstrate inadequacies in the individual rib drop test nor has the petitioner provided an explanation of the alleged deficiency of this test. Accordingly, the agency is denying the request to delete the individual rib drop test.

2. Tuning Springs

Petitioners raised two issues about the final rule's tuning springs specifications. First, the Alliance, Denton and FTSS pointed out a discrepancy between the user's manual (Procedures for Assembly, Disassembly and Inspection (PADI)) and Drawing 175–4040 regarding the spring rate for the middle (black) spring. The PADI specifies the spring rate as 16.6 Newtons per millimeter (N/mm), whereas the drawing has a 16.4 N/mm specification. The Alliance believed that the latter specification is correct. We confirm that the spring rate of 16.4 N/mm is correct and we have corrected the typographical error in the PADI.

The second issue relates to the 10 percent tolerance of the spring rates shown in several drawings of the springs (Note 2 in drawing 175–4040, black spring (16.4 N/mm spring rate); in drawing 175–4041, white spring (13.8 N/mm); and in drawing 175–4042, blue spring (19.0 N/mm)). (Each rib of the dummy contains a spring that can be changed out to adjust the amount of rib deflection upon impact.) All petitioners believed that the tolerances were too large. FTSS and Denton recommended a tolerance of ±1 N/mm for all three drawings. Denton noted that with the currently specified spring tolerances which allow overlap of the spring rates, springs could be replaced for tuning purposes but the lab will not ''get the expected effect because of spring variability.'' Denton states that they have manufactured these springs under tighter tolerances than ±1 N/mm, and that although it increases the spring cost to do so, ''it prevents much larger costs that result from trial and error in testing while trying to tune rib modules.'' The Alliance stated that the tolerances for the three tuning springs are such that the specified spring rates can overlap and recommended that the tolerance on the springs be limited to ±5 percent, rather than the current tolerance of ±10 percent. The Alliance stated that the SAE DTESC also recommended a tolerance of ±5 percent.

Agency Response

NHTSA agrees that the tolerance of ±10 percent is too large for the reasons provided by the petitioners and has decided to adopt a ±1 N/mm tolerance as recommended by FTSS and Denton. Changing the tolerance to ±1 N/mm will result in a tighter control of the rib response than the specification of the final rule and will prevent overlap of the tuning spring rates, while providing more leeway in meeting the tolerance than the ±5 percent tolerance suggested by the Alliance. Accordingly, we have revised drawings 175–4040, 175–4041 and 175–4042 to specify a spring rate tolerance of ±1.0 N/mm.

d. Thorax Assembly, Full-Body Test

1. Use of the Full Body Thorax Impact Test

Denton requested that the full-body thorax impact test be eliminated because the petitioner believed the test ''is destructive, and redundant to the drops [sic] tests in 572.185.'' Denton stated that the impact—

> causes damage to the foam on the dummy ribs with every impact that is done * * * [W]e estimate that the foam on the dummies ribs will need to be replaced after only 20–50 certification tests on the dummy. * * * [U]sers may experience limited durability of the dummy due to the certification test, caused by a lack of fully understanding the batch to batch foam variations. * * * [T]he fact that the dummy changes with every test

[4] In the 3 m/s data set, calculated drop heights exceeded the final rule specification of 454–464 mm, ranging from 471–474 mm, while in the 4 m/s data set, the calculated drop heights ranged from 779–783 mm, which does not reach the final rule specification of 807–823 mm.

makes it impossible for the certification test to be a repeatable and reproducible evaluation of the dummy. (Denton petition, pp. 2–3)

Alternatively, Denton suggested new performance corridors for the dummy's response ranges (deflections of the upper, middle and lower ribs, and the maximum force of the impactor at 6 ms or more after time zero) based on a DTESC-compiled data set, which included test data from NHTSA, Denton and GM. Denton endorsed the DTESC's use of ±3 times the standard deviation of the data set to establish corridors. In contrast to Denton's endorsement of corridors based on ±3 times the standard deviation, in its petition the Alliance stated that it analyzed the DTESC data and recommended corridors based on ±2 times the standard deviation of the data set.

Agency Response

NHTSA is denying the request to eliminate the full body thorax impact test. The test is necessary to assess the dummy's thorax performance as a system, as opposed to assessing the performance of each rib individually in the rib drop test. A full-body test such as the ES–2re full body thorax impact test is also included in the qualification test procedures for other side impact dummies, including the SID, SID–IIsD and WorldSID.[5] Performance corridors for the full body thorax test were formed as discussed below in section IV.d.5 of this preamble.

2. Full Body Thorax Test Impact Velocity

The Alliance petitioned to revise the test speed for the full body thorax impact test ''such that it does not significantly degrade the rib foam.'' The petitioner stated that a study by Denton showed that force variation was shown to occur in repeat tests due to degradation of the rib foam material, eventually resulting in responses falling out of the corridor for the maximum force of the impactor 6 ms or more after time zero. The Alliance stated that ''force [is] the most sensitive parameter and increase[s] as more tests are conducted due to rib foam degradation. This could require rib replacement after approximately 20–50 certification tests, which the Alliance considers unacceptable in terms of durability.'' (Alliance petition, p. 3)

Agency Response

The agency is not reducing the impact velocity for the test. The impact velocity was reduced from the NPRM's value of 6.7 m/s to the final rule's value of 5.5 m/s, in response to FTSS's comment to the NPRM (NHTSA Docket No. 18864–22) that the impact velocity (6.7 m/s) was too severe, and that a more appropriate impact velocity would probably be between 5.0 and 6.0 m/s. NHTSA evaluated the comment by conducting full-body thorax qualification tests to determine a more appropriate test speed. The results of the test series led to the establishment of an impact speed of 5.5 m/s, which fell within the range suggested by FTSS.

The impact velocity for the ES–2re full body thorax impact test was chosen to achieve rib deflections at the levels considered for the ES–2re Injury Assessment Reference Value (IARV) in the FMVSS No. 214 rulemaking that incorporated the test dummy into the side impact protection safety standard. The September 11, 2007 FMVSS No. 214 final rule specifies that the deflection of any of the upper, middle, and lower ribs shall not exceed 44 millimeters (mm) (1.65 inches).[6] NHTSA sought an impact velocity for the full body thorax impact test that verified the dummy's response at this IARV level of rib deflection. Repeatable, reliable responses in qualification tests that exercise the ribs to this IARV level will ensure repeatable and reliable results from one vehicle test to another. As described in the report, ''Development of a Reduced-Severity Full Body Thorax Certification Procedure and Response Requirements for the ES–2re Dummy'' (Docket DMS 25441–13), the impact velocity of 5.5 m/s was chosen because it was the lowest impact velocity that produced rib deflections near the IARV. A lower impact speed would not produce sufficient rib deflection and thus would not give indication of the dummy's performance at the critical 44 mm deflection levels.

Following establishment of an impact speed of 5.5 m/s, the agency conducted a series of tests to generate performance corridors for the full-body thorax test. These tests subjected three dummies to 15 impacts each, with five impacts for each tuning spring stiffness. Although some impacts produced deflections that were above the IARV of 44 mm, no problems with rib durability were observed. Furthermore, the petitioners did not provide conclusive evidence that the 5.5 m/s impact speed produced the reported rib degradation. Rib durability is discussed further below; however, it does not appear to be an issue related to the test speed.

3. Durability

The Alliance, referencing the SAE DTESC meeting minutes from January 19, 2007, stated that repeat full-body thorax tests caused degradation of the rib foam material, which in turn resulted in variation of the ''Impactor Force after 6 ms'' measurements. This caused force responses to eventually fall outside the prescribed corridor. The Alliance also referenced linear regression plots showing ''the variation of rib deflections and force as repeat full body thorax tests were conducted,'' and additional linear regression plots provided in the DTESC meeting attachments that indicate that the impactor force is the ''most sensitive parameter and increas[es] as more tests are conducted due to rib foam degradation.'' The Alliance claimed that the ribs could require ''replacement after approximately 20–50 certification tests,'' which it ''considers unacceptable in terms of durability.'' Denton, which also referenced the January 19, 2007 DTESC Meeting Minutes, had similar comments regarding durability.

Agency Response

As mentioned in the previous discussion, the full body thorax impact test is necessary for evaluation of the dummy as a system. Additionally, the test is conducted at 5.5 m/s because this speed is required to induce rib deflections at the level of the IARV. The dummy must be tested at this level of deflection to ensure that its performance in a crash test will be reliable.

Results from agency full-body thorax qualification tests conducted at 5.5 m/s cannot be appropriately analyzed for trends such as those described by the petitioners, as there are not enough tests of any one dummy to confidently state that the responses are behaving in a certain manner (5 tests are available for each dummy). However, these five tests per dummy do not show strong trends in the behavior of the peak impactor force. The durability of the ES–2re was an issue discussed in response to comments to the December 14, 2006 NPRM. In responding to the comments, the agency discussed the durability of the ES–2re in agency testing. It was found that after full-body thorax impacts conducted at 6.7 m/s[7] on two

[5] WorldSID is not yet codified in 49 CFR Part 572. It was developed by industry representatives from the U.S., Europe and Japan, with the support of the European and Japanese governments and is considered by many to be the next-generation 50th percentile male side impact dummy (see DMS Docket No. 2000–17252).

[6] A chest deflection threshold of 44 mm corresponds to a 50 percent risk of AIS 3+ injury for a 45-year-old.

[7] 6.7 m/s was the proposed impact velocity for the full-body thorax impact test discussed in the NPRM.

dummies (5 impacts on one dummy, 15 on the other), no parts of the dummy exhibited any observable component damage or failure. Additionally, no significant durability problems were identified after 14 pole tests and 14 MDB vehicle crash tests. The final rule therefore concluded that the durability of the ES–2re is fully acceptable for its intended use in FMVSS No. 214.

Although NHTSA has conducted a number of tests on the ES–2re dummy without any durability issues arising in the ribs, the data provided in the DTESC meeting attachments submitted by Denton and referenced by the Alliance were also carefully analyzed, and the following observations were made:

• The ''Impactor Force after 6 ms'' data [8] that the Alliance refers to as eventually falling outside the prescribed corridor is a compilation of results from a number of different dummies. Most of the dummies produced fairly consistent results, whether within or somewhat outside the final rule performance corridor. The ES2–LAB dummy, tested at Denton ATD, had rising response measurements that eventually exceeded the final rule corridor limit (see middle set of ''Removed Dummies'' in Figure 4 of this preamble, *infra*.). Three ES2–LAB dummy measurements significantly exceeded the upper performance limit; these were conducted after an ''investigational test series,'' the conditions of which were not provided. The photograph of a damaged rib provided by Denton in the DTESC minutes was taken after these three tests. Therefore it is unknown whether the damage was related to the final rule qualification procedures or to the investigational test series conducted earlier on this dummy. The reason that this dummy responded in this manner is unknown; however, the trend was unique to this dummy and does not indicate durability problems with the ES–2re in general.

• The linear regression plot of the ''Impactor Force after 6 ms'' results referred to by petitioners Denton and the Alliance shows a positive slope, suggesting that the response is rising as more tests are conducted. However, the correlation is very weak ($R^2 = 0.1072$), and furthermore all data fall within the final rule corridors. Therefore, this plot does not illustrate any problematic responses.

• It appears that as more tests are conducted, the impactor force before 6 ms rises. However, this response is not important for qualification or crash tests. As long as the dummy responds in a consistent manner at high deflections, such as those in qualification and crash tests, its inertial response (before 6 ms) is inconsequential.

As discussed, the petitioners do not provide strong evidence of rib durability problems. However, the agency recognizes that other side impact dummies (*i.e.*, SID–IIsD, WorldSID) are specified to have an impact speed of 4.3 m/s for testing the full-body thorax. Therefore, to ensure that the severity of qualification tests is consistent between side impact dummies, the rib deflections required for qualification of the SID–IIsD were compared to their respective IARV levels. (For the WorldSID, an IARV is not yet available as injury criteria are still under development.) The SID–IIsD dummy has a monitored IARV limit of 38 mm for all thoracic ribs,[9] although at this time FMVSS No. 214 does not specify a rib deflection limit for this dummy. To make a fair comparison between the deflection levels of the qualification test versus the IARV for the SID–IIsD and ES–2re, the SID–IIsD test conditions should be as close as possible to the ES–2re test conditions. Therefore, the deflections of the SID–IIsD ''thorax without arm'' test (rather than the ''thorax with arm'' test) were compared to its monitored IARV limit because the ES–2re full body thorax test is conducted with the struck-side arm removed. The rib deflection corridors for qualification of the SID–IIsD dummy are presented in Table 1 below.

TABLE 1.—RIB DEFLECTIONS SPECIFIED FOR SID–IIsD THORAX QUALIFICATION

Qualification test	Deflection (mm)		
	Lower rib	Middle rib	Upper rib
Thorax without Arm	36–43	39–45	33–40
Thorax with Arm	32–38	30–36	26–32

Comparison of the qualification test corridors to the monitored IARV limit of the SID–IIsD thoracic ribs show that the deflections for the thorax without arm qualification test are in line with the monitored IARV for the thoracic ribs. Thus, even though the impact speed is slower for the SID–IIsD qualification than for the ES–2re, the induced rib deflections, like those in the ES–2re qualification test, are at the level of the monitored IARV.

A similar comparison can be made using the Hybrid III 50th percentile male (Subpart E) dummy. For qualification of this dummy's thorax, the front of the dummy thorax is impacted using the same probe as that used on the ES–2re at a velocity of 6.7 m/s (22 feet per second (fps)), and the sternum displacement relative to the spine is specified to be 68 ± 4.57 mm (2.68 ± 0.18 inches). As of September 2006,[10] FMVSS No. 208's frontal barrier tests specify a maximum compressive deflection of the sternum of 63 mm for the Hybrid III 50th percentile male driver and passenger dummies in these tests. Therefore again, the amount of compression specified in the qualification test is consistent with the IARV required by the corresponding vehicle crash test.

Finally, both the Alliance and Denton estimated that under the current qualification test procedure, the ribs would require replacement after 20–50 certification (qualification) tests. However, inasmuch as dummies are rarely subjected to such high numbers of repeat qualification tests, this number does not provide a clear indication of dummy durability. The purpose of qualification is to assure the dummy's performance in a sled or crash test, therefore after it is qualified, the dummy will be used in these types of tests. Because sled and crash tests can be of varying severity, wear-and-tear on the dummy over time will differ based on the test conditions. Thus, the life of the dummy's components is more dependent on the severity, rather than the number, of tests to which the

[8] Attachments 17–19 of the SAE DTESC January 17, 2007 minutes. Submitted as part of Denton's petition for reconsideration to the ES–2re final rule, NHTSA Docket No. 25441–17.

[9] Kuppa, S. ''Injury Criteria for Side Impact Dummies.'' National Transportation Biomechanics Research Center, NHTSA. January 2006.

[10] The date that all new light vehicles were required to comply with the advanced air bag requirements set forth in section S14 of FMVSS No. 208. Prior to this requirement, vehicles not certified to section S14 could comply under tests that specified a maximum compressive deflection of the sternum relative to the spine of 76 mm.

dummy is subjected. Given this, the agency cannot concur that replacement after 20–50 qualification tests is indicative of poor rib durability.

In conclusion, an issue with rib durability cannot be clearly identified by the data provided, and the relative severity of the test with respect to the resulting rib deflection is comparable to those of the SID–IIsD and Hybrid III 50th percentile male dummies. Although petitioners provide an estimated number of qualification tests before rib replacement would be necessary, this estimate does not reflect the typical use of dummies and thus does not give an indication of the level of rib durability. Therefore, the full body thorax test will remain a requirement for ES–2re qualification, and the impact speed will remain as specified in the final rule.

4. Repeatability and Reproducibility

Denton believed that ''the fact that the dummy changes with every test makes it impossible for the certification test to be a repeatable and reproducible evaluation of the dummy.'' This comment refers to the petitioner's earlier discussion on rib durability, where they claim that ''this full body thorax impact test causes damage to the foam on the dummy ribs with every impact that is done'' and ''every single impact to the dummy degrades the foam on the ribs.''

Agency Response

As discussed in previous sections, the data provided by the petitioner do not sufficiently support a finding of a dummy durability problem for the ES–2re. Also, the data set used to form performance corridors shows very good repeatability and reproducibility. This data set included five different dummies from two labs and two manufacturers that were each tested at least five times. The coefficient of variations (CVs) for rib deflection responses from individual dummies ranged from 0.44 percent—2.09 percent, and the CVs for peak force after 6 ms ranged from 0.82 percent—3.85 percent, indicating excellent repeatability. In terms of reproducibility, rib deflection CVs ranged from 2.66 percent—2.96 percent, and the CV for peak force after 6 ms was 4.76 percent (see Table 2, below). These low CV values show that measurements from one dummy to the next were very consistent, *i.e.*, the test results are reproducible.[11] For these reasons, the agency disagrees with the petitioner that this test does not provide a repeatable and reproducible evaluation of the dummy.

TABLE 2.—MEAN, STANDARD DEVIATION, AND COEFFICIENT OF VARIANCE (CV) FOR ES2–RE DUMMIES TESTED IN THE FULL BODY THORAX QUALIFICATION TEST

[Bold text indicates dummies that were removed from the data set for the formation of performance corridors; see section d.5 of this preamble]

Lab and dummy No.		Upper rib peak disp (mm)	Middle rib peak disp (mm)	Lower rib peak disp (mm)	Peak force after 6 ms (N)
VRTC* 009	mean	35.4	39.72	38.46	5713.7
	SD	0.738	0.795	0.586	219.9
	CV	2.09%	2.00%	1.52%	3.85%
VRTC 70	mean	37.26	40.74	39.64	5678.2
	SD	0.747	0.404	0.462	128.1
	CV	2.00%	0.99%	1.16%	2.26%
VRTC 71	mean	39.4	42.6	40.26	5594.0
	SD	0.187	0.187	0.385	45.9
	CV	0.47%	0.44%	0.96%	0.82%
Denton 154	**mean**	**38.6**	**41.9**	**41.7**	**5521.3**
	SD	**0.785**	**0.659**	**0.432**	**72.138**
	CV	**2.03%**	**1.57%**	**1.04%**	**1.31%**
Denton 184	mean	37.3	40.4	41.2	5760.6
	SD	0.610	0.586	0.628	147.031
	CV	1.63%	1.45%	1.52%	2.55%
Denton ES2–LAB	**mean**	**37.7**	**40.5**	**40.4**	**6020.0**
	SD	**0.764**	**0.603**	**0.937**	**365.095**
	CV	**2.03%**	**1.49%**	**2.32%**	**6.06%**
Denton ES2–3	mean	38.0	42.4	41.4	5049.5
	SD	0.662	0.441	0.387	111.434
	CV	1.74%	1.04%	0.93%	2.21%
GM #2	**mean**	**40.2**	**43.9**	**44.6**	**5020.0**
	SD	**0.707**	**0.283**	**0.071**	**0.000**
	CV	**1.76%**	**0.64%**	**0.16%**	**0.00%**
FTSS ES2–001	**mean**	**35.0**	**40.1**	**40.0**	**5422.3**
	SD	**1.371**	**0.871**	**0.800**	**100.021**
	CV	**3.92%**	**2.17%**	**2.00%**	**1.84%**
FTSS 175–0000–023	**mean**	**36.1**	**41.2**	**40.1**	**5536.4**
	SD	**1.032**	**0.410**	**0.014**	**132.363**
	CV	**2.86%**	**1.00%**	**0.04%**	**2.39%**
ALL (non-bold only)	Mean	37.4	40.8	40.7	5643.3
	Stdev	1.11	1.09	1.08	268.38
	CV	2.96%	2.67%	2.66%	4.76%
ALL (including bold)	Mean	37.5	40.9	40.8	5667.3
	Stdev	1.31	1.13	1.20	326.92
	CV	3.49%	2.75%	2.95%	5.77%

* NHTSA's Vehicle Research and Test Center.

[11] When all dummies were included in a reproducibility analysis (i.e., dummies included in the data set for corridor formation as well as those that were excluded), rib deflection CVs ranged from 2.75%–3.49%, and the CV for peak force after 6 ms was 5.77%.

5. Performance Corridors

With regard to the performance corridors for the full body thorax test, NHTSA is revising the performance corridors to reflect responses obtained from a greater sample of dummies than was available when forming the final rule corridors. The revised corridors were derived from analysis of the DTESC data set. As explained below, most but not all of the DTESC data were used.

The basis for formation of the final rule performance corridors was discussed in the report, ''Development of a Reduced Severity Full Body Thorax Certification Procedure and Response Requirements for the ES–2re Dummy,'' (Docket NHTSA 2006–25441–13). As NHTSA was developing the full body thorax response corridors, the agency believed that the ideal test scenario would be to use ribs that met the individual rib drop specifications precisely at the upper and lower bounds of the individual rib drop corridor. Measurements taken with these ribs would allow for prediction of all possible full body thorax responses when individually qualifying ribs are installed in the dummy. However, given the limited number of rib sets available for testing, it was not possible to obtain ribs that responded precisely at the limits of acceptable performance. Therefore, some ribs tested in the full body test had individual rib drop responses somewhat above or below the corridor bounds, while others were within the corridor. The results of the full body impact tests were then plotted against the corresponding individual rib responses and a linear regression was performed to relate the responses of these two tests. Using this regression, the rib responses in a full body test at the upper and lower limits of the individual rib drop corridor were predicted. Performance corridors for the full body test were formed based on the intersection of this regression line with the performance limits of the individual rib drop test.[12]

The agency only used full body tests with the out-of-specification individual ribs in the regression and did not use them to determine the overall response variability of the thorax. The data set used for the formation of performance corridors by statistical means (as discussed in the following paragraphs) only included the full body thorax impact responses that were generated using ribs that met the requirements of the individual rib drop test.

FTSS petitioned for changes in the ''Peak Impactor Force after 6 ms'' corridor based on statistical analysis of all NHTSA data along with additional data from FTSS, Denton and GM. However, the FTSS data set included NHTSA results derived using out-of-specification ribs. Moreover, corresponding rib drop results were not provided for the full body impact tests conducted by FTSS, Denton and GM. Though the NHTSA results using out-of-specification ribs could be removed from the data set, it is unknown whether the responses from FTSS, Denton and GM were based on ribs that passed qualification tests individually. Therefore, results from this data set were not considered for the formulation of new performance corridors.

The data set with which the Alliance and Denton recommended new performance corridors was compiled by the SAE DTESC and submitted by Denton. This data set contained results from full body and individual rib qualification tests conducted at NHTSA, Denton and GM,[13] and is the source for the data analysis and corridor formation discussed in the following sections. However, as discussed below, before using this data set to establish performance corridors, some results were removed.

NHTSA data, which was taken from the report ''Development of a Reduced Severity Full Body Thorax Certification Procedure and Response Requirements for the ES–2re Dummy'' (supra), included results from three different dummies. One set of NHTSA responses—included in the DTESC dataset—was obtained with a middle rib that did not meet individual rib drop specifications (dummy 009, blue springs). Because the performance of the dummy in full body impacts would be affected by the out-of-spec middle rib, we removed the five tests in this series from the data set.

Denton performed full body thorax tests on four dummies, three of which had corresponding individual rib drop test results. We eliminated from consideration for corridor formation the dummy that did not have individual rib drop results (#154). Two other dummies' responses in the DTESC data set were also removed. The first was another dummy from Denton, ES2–LAB, which (as discussed previously) showed unusual peak impactor force responses in that as more tests were conducted, the peak impactor force measurement climbed consistently. This appeared to be indicative of a problem with this particular dummy, as the responses of other Denton dummies were fairly consistent. Denton also indicated that the three highest responses of this dummy were ''after an investigational test series.'' Based on the SAE DTESC minutes attached to Denton's petition, it appears that this ''investigational series'' was actually two series: The first a study of the effect of velocity on full body thorax impact results, and the second a study looking at the effects of twist angle, tilt angle, and vertical position of the dummy. However, the conditions of these test series were not provided; therefore it is unknown whether the dummy response in the last three qualification tests was altered due to previous test conditions.

The second removed dummy was tested at GM, where two full body thorax impact tests were conducted on one dummy. Although passing individual rib drop results were provided, this dummy consistently showed low impactor force responses and high rib deflections for all three ribs, indicating that its behavior differs from the majority of dummies. Information on the prior test exposures for this dummy was not provided.

The agency analyzed the resulting data set to evaluate the corridors of the final rule and those of the petitions for reconsideration, to determine if adjustments to the final rule corridors were warranted. Figures 1 to 4 below show the data that was retained for corridor formation for each of the four response measurements for the full body thorax impact test, as well as—for illustration purposes—the data from the removed dummies with passing or unknown individual rib drop results (which included three Denton dummies, two FTSS dummies, and one GM dummy, as discussed above). (Data from those dummies are presented in Figures 1–4 as ''Removed Dummies'' and were not included in the data set for statistical analysis, *i.e.*, calculation of the mean, standard deviation, etc.)

Table 3 below summarizes the petitioners' suggested performance corridors for the full body thorax impact test, and the corridors adopted today in response to the petitions for reconsideration of the final rule.

[12] Although some tests were conducted outside the limits for individual rib qualification, the regression showed a fairly good linear correlation between the full body response and the individual rib response. Therefore the ''outside'' points did not distort the regression.

[13] Attachment 17 to the Unconfirmed Minutes of the January 19, 2007 SAE DTESC meeting, submitted as part of Denton's petition for reconsideration to the ES–2re final rule, NHTSA Docket No. 25441–17.

TABLE 3.—CURRENT, SUGGESTED AND REVISED PERFORMANCE CORRIDORS FOR THE FULL BODY THORAX IMPACT QUALIFICATION TEST

Measurement	December 14, 2006 final rule	Alliance (±2stdev)	FTSS	Denton	NHTSA response to petitions
Peak Upper Rib Deflection (mm)	33.2–41.3	35–40	33.2–41.3	33.2–41.3	34–41
Peak Middle Rib Deflection (mm)	37.1–45.4	38–43	37.1–45.4	37.1–45.4	37–45
Peak Lower Rib Deflection (mm)	35.6–43.0	38–44	35.6–43.0	36.4–44.9	37–44
Peak Impactor Force after 6 ms (N)	5173–6118	5045–6344	5039–6159	4720–6669	5100–6200

(i) Upper Rib Deflection

All of the data in the complete dataset (*i.e.*, without any dummies removed) fit within the specified final rule corridor of 33.2–41.3 mm, as seen in Figure 1 below. The Alliance petitioned to narrow the corridor bounds to a range of 35–40 mm. The data set with the indicated dummy responses removed (''revised data set'') has a mean deflection of 37.4 mm, a standard deviation of 1.11 mm and a CV of 2.96 percent. In that this CV is less than 3 percent, we could adopt corridor bounds that are expanded ±3 standard deviations from the mean,[14] or a range of 34.1–40.8 mm. When rounded to the next whole numbers away from the mean, this corridor becomes 34–41 mm, which is only slightly narrowed compared to the final rule. This corridor contains nearly all the NHTSA and DTESC data points, and is well-centered about the mean.

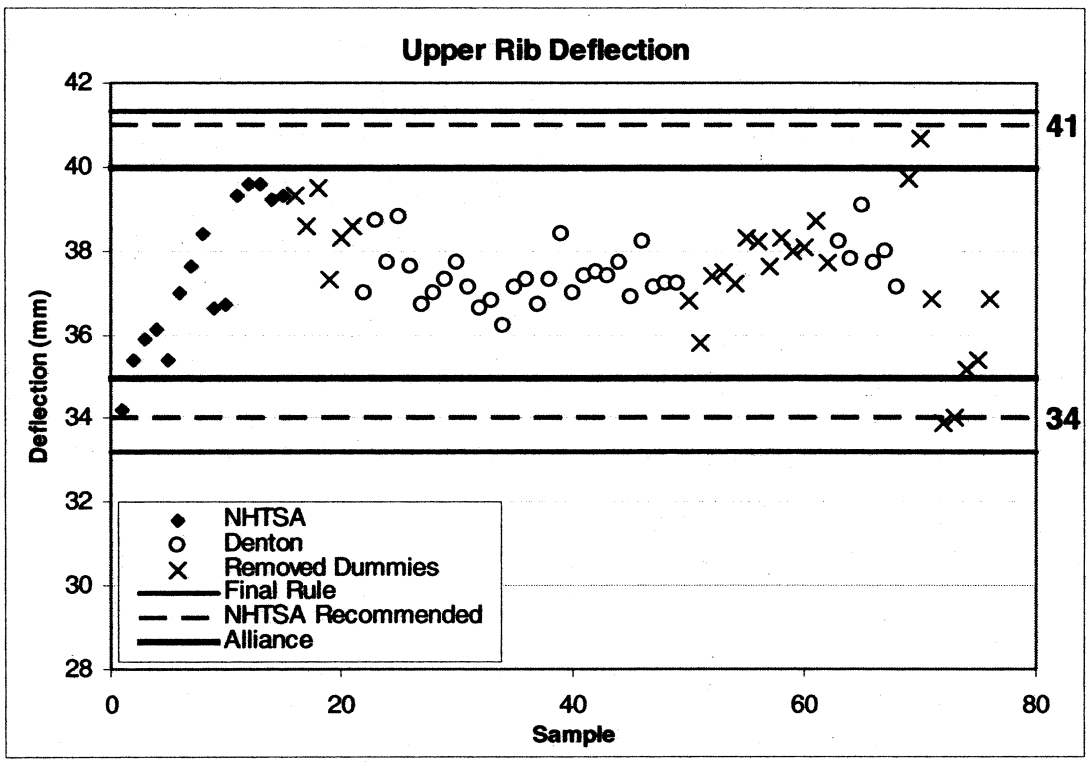


FIGURE 1: FULL BODY THORAX IMPACT TEST RESULTS FOR UPPER RIB DEFLECTION

(ii) Middle Rib Deflection

All data in the complete DTESC data set also fit within the corridors specified in the final rule for middle rib deflection, 37.1–45.4 mm (see Figure 2 below). However, the Alliance petitioned for narrowed corridor bounds of 38–43 mm. Statistical analysis of the revised data set resulted in a mean response of 40.8 mm, a standard deviation of 1.09 mm and a CV of 2.67 percent. This CV allows for corridor bounds placed at ±3 standard deviations from the mean, or a range of 37.6–44.1 mm (37–45 mm when rounded away from the mean). This corridor is very close to the corridor specified in the final rule, and includes all the data submitted by the petitioners as well as all NHTSA data. Thus, NHTSA is amending the peak middle rib deflection corridor to 37–45 mm.

[14] In rulemakings involving the ES–2re and SID–IIsD, performance corridors have been formed under the following method: for a CV less than or equal to 3 percent, limits are expanded ±3 standard deviations from the mean. For CVs between 3 percent and 5 percent, corridor bounds are set at ±2 standard deviations from the mean. Finally, if the CV is above 5 percent but below 10 percent, the bounds are set ±10 percent from the mean. Following this initial placement, the corridor limits are rounded to the next whole number away from the mean, then adjusted further if warranted, on a case-by-case basis.

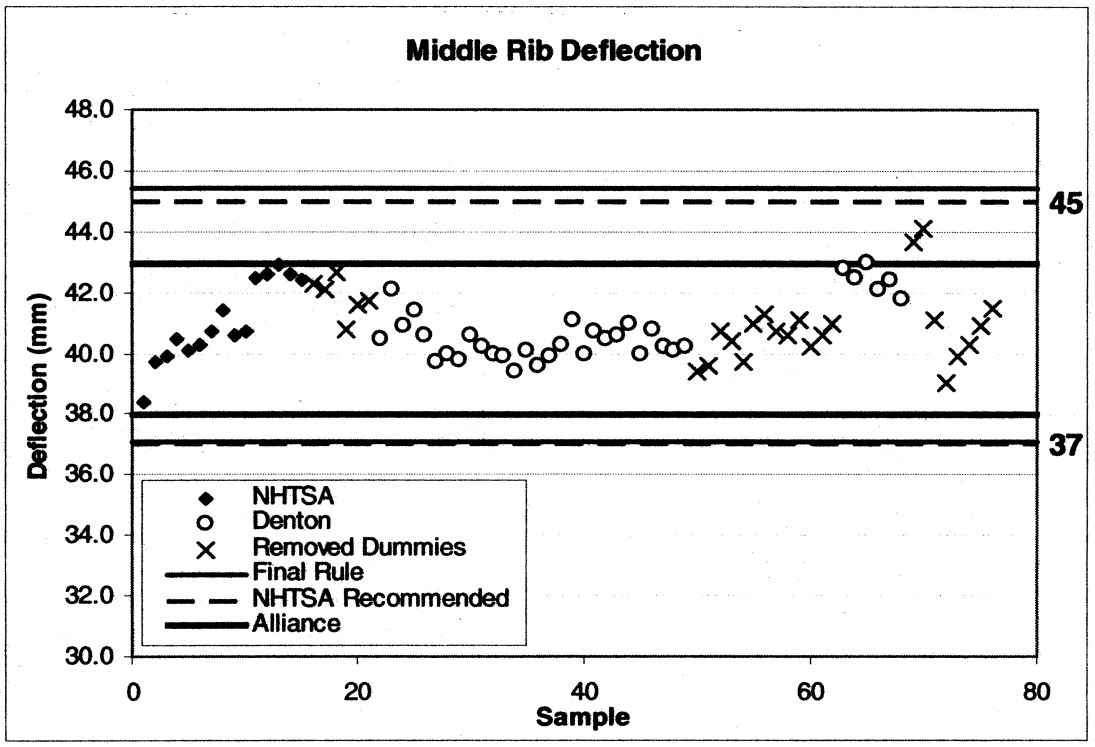


FIGURE 2: MIDDLE RIB DEFLECTION RESULTS FROM FULL-BODY THORAX IMPACT TESTS

(iii) Lower Rib Deflection

Denton and GM dummies in the DTESC-compiled data set submitted in Denton's petition for reconsideration show deflections that are generally higher than those measured by NHTSA. The final rule specified a range of 35.6–43.0 mm, while the Alliance and Denton recommended corridors ranging from 38–44 mm and 36.4–44.9 mm, respectively. Based on statistical analysis of the revised DTESC data set, an adjustment of the corridor bounds to reflect these higher responses from a larger population of dummies is appropriate. The revised data set has a mean response of 40.7 mm, a standard deviation of 1.08 mm, and a CV of 2.66 percent. This CV allows for expansion of the bounds ±3 standard deviations from the mean, producing a range of 37.5–43.9 mm, or 37–44 mm when rounded away from the mean. This corridor is slightly smaller than and shifted upward from the final rule corridor, but wider than the corridor for which the Alliance petitioned. This corridor contains nearly all petitioner-submitted data as well as all NHTSA data (Figure 3).

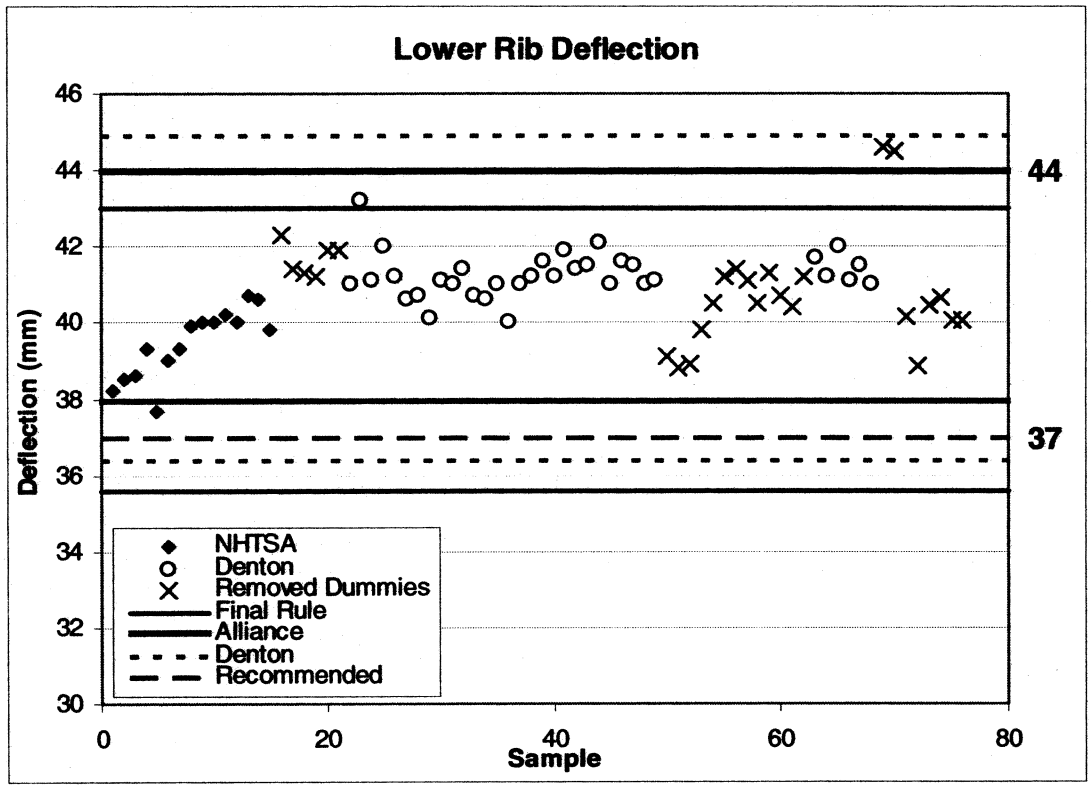


FIGURE 3: LOWER RIB DEFLECTION RESULTS FROM FULL BODY THORAX IMPACTS

(iv) Peak Impactor Force After 6 ms

The additional peak impactor force data compiled by the SAE DTESC and submitted by Denton provide additional points with which to form statistically-based corridors. In its petition, the Alliance used this data set to propose a corridor of 5045–6344 N, while Denton recommended a range of 4720–6669 N, as shown in Figure 4. FTSS recommended a performance corridor of 5039–6159 N for this measure. (The FTSS corridor is close to the Alliance recommendation, therefore to avoid clutter in Figure 4, it is shown to correspond to the Alliance corridor.) The mean response derived from the revised data set was 5643 N, with a SD of 268 N and a CV of 4.76 percent. This CV allows for setting the corridor limits at ±2 standard deviations from the mean, at 5107–6180 N. Rounded away from the mean, the lower and upper corridor bounds of the recommended corridor are 5100 N and 6200 N, respectively, a range very close to that which was petitioned by FTSS.

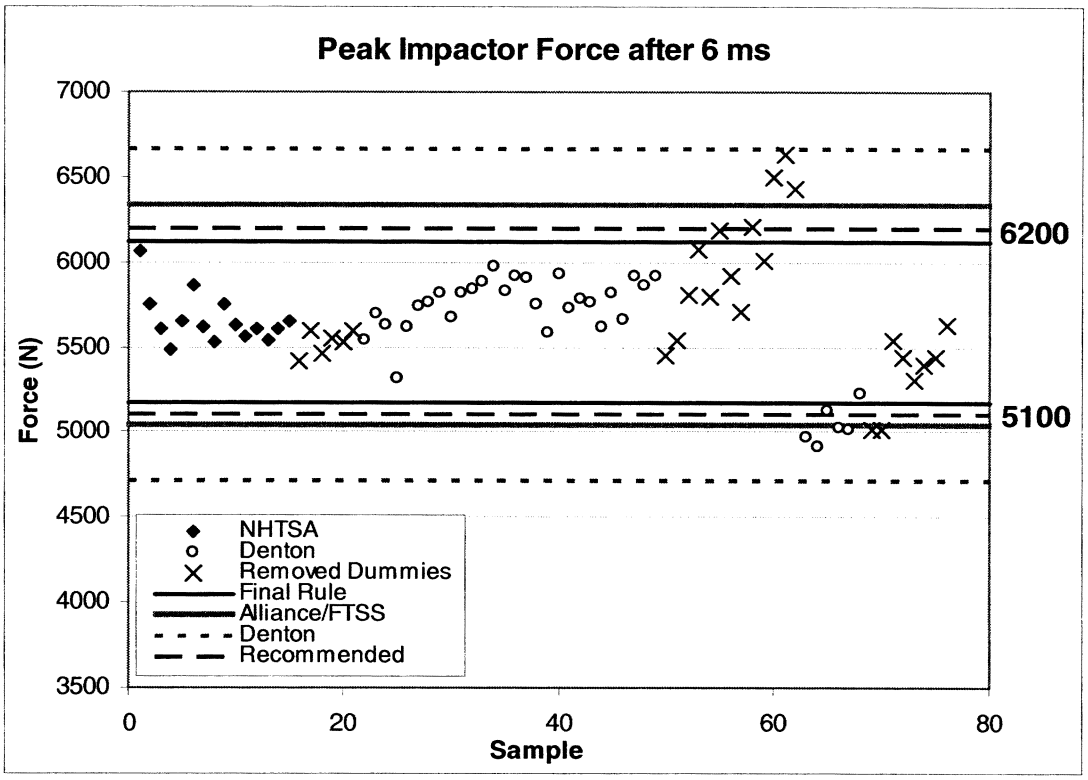


FIGURE 4: TEST RESULTS FOR THE "PEAK IMPACTOR FORCE AFTER 6 MS" MEASUREMENT AS COLLECTED BY NHTSA, DENTON, GM AND FTSS

(v) Width of Performance Corridors

Denton endorsed the SAE DTESC recommendation to establish performance corridor bounds at ±3 standard deviations from the mean of the data set since the petitioner believed there is ''very limited lab-to-lab, technician to technician, and dummy to dummy variability included in the data set. Since this is a brand new test, it was difficult to accumulate much data * * * since this data set is very limited, 99% of the available data should be included since test variation always occurs.''

The agency believes that the data set has sufficient lab-to-lab and dummy-to-dummy variability to form performance corridors using the standard method (see previous footnote on the method used in rulemakings, *supra*). In all, 76 tests were conducted on ten dummies at four laboratories. However, performance corridors were formed based on the results of five dummies at two laboratories (49 tests). Although data from five dummies were removed for corridor formation due to missing individual rib drop results or suspected problems with the dummy, nearly all of these results still fit within the revised corridors (Figures 1–4, *supra*). Furthermore, due to the relatively low amount of variation that was seen in the data (both the data that was used to generate corridors and that which was removed) as shown in Table 2, all corridors in the full-body thoracic test with the exception of the peak impactor force were set at ±3 standard deviations from the mean when using the standard method.

e. Cross-References and Typographical Errors in Regulatory Text

The Alliance and Denton noted a number of incorrect cross-references in the December 14, 2006 final rule. Denton noted these by attaching a copy of the January 19, 2007 SAE DTES meeting minutes.[15] The suggested corrections are discussed below. Also, at the end of this section we correct two minor errors that we found on our own.

1. In 572.183(b)(1), reference 572.189(o) should be 572.189(n).

NHTSA agrees that Part 572.183(b)(1) should be amended to read, ''Soak the neck-headform assembly in a test environment as specified in § 572.189(n)'' * * *

2. In 572.185(b)(1)(i), reference 572.189(o) should be 572.189(n).

We agree that 572.185(b)(1)(i) should be changed to read, ''Soak the rib modules (175–4002) in a test environment as specified in § 572.189(n)'' * * *

3. In 572.183(b)(5), reference 572.189(k) should be 572.189(j).

We agree that in 572.183(b)(5), ''Time zero is defined in § 572.189(k)'' should be changed to ''Time zero is defined in § 572.189(j).''

4. The table name for the table between 572.183(b)(5) and 572.183(c), ''Table to 1 to Paragraph (A),'' should be ''Table 1 to Paragraph (a),'' as called out in 572.183(b)(3). The agency agrees to correct the typographical error in the title for this table to read: ''Table 1 to Paragraph (a)'' (changing ''A'' to lower case ''a'' and removing the word ''to'' between ''Table'' and ''1'').

5. Petitioners believe that in 572.186(b)(6), reference 572.189(k) should be 572.189(j).

NHTSA does not agree that the reference should be 572.189(j). Qualification tests of the abdomen require that time zero be determined using the procedures specified in § 572.189(k). Thus, the reference should remain as in the final rule.

6. In 572.187(b)(1), reference 572.189(o) should be 572.189(n).

We agree to changing the reference as petitioned, so that the text of 572.187(b)(1) reads, ''Soak the lumbar spine-headform assembly in a test

[15] Submitted in Denton's petition for reconsideration, NHTSA Docket No. 25441–17.

environment as specified in § 572.189(n)'' * * *

7. In 572.187(b)(5), reference 572.189(k) should be 572.189(j).

NHTSA agrees that in 572.187(b)(5), ''Time zero is defined in § 572.189(k).'' should be changed to ''Time zero is defined in § 572.189(j).''

8. In 572.188(b)(4), reference ''Figure U5'' should be ''Figure U6.''

We agree. In the NPRM, the reference in 572.188(b)(4) to Figure U5 was correct. However, with the addition of a figure for thorax impact in the final rule, the pelvis impact illustration became Figure U6. Therefore, 572.188(b)(4) should be amended to read, ''* * *as shown in Figure U6 in Appendix A * * *'' Additionally, there is an omission in section 572.188(b). The section fails to define the procedure for determining time zero. NHTSA is adding 572.188(b)(6) to state: ''Time zero is defined in § 572.189(k).''

9. Petitioners stated that in 572.188(c)(1), reference 572.189(k) should be 572.189(j).

NHTSA does not agree that the reference should be 572.189(j). For correct analysis of pelvis qualification data, time zero must be defined following the procedures given in § 572.189(k). However, since the correct specification for time zero was added in 572.188(b)(6), the reference to time zero in this section is unnecessary and is hereby removed.

10. Petitioners believe that in 572.188(c)(2), reference 572.189(k) should be 572.189(j).

We do not agree. Pelvis qualification tests require that time zero be defined according to the procedure specified in § 572.189(k). However, since the correct specification for time zero was added in 572.188(b)(6), the reference to time zero in this section is unnecessary and is hereby removed.

11. The agency has found an error in Figure U2–A, which specifies the pendulum for neck/lumbar spine qualification tests to be the ''Part 572 Subpart E Pendulum (Figure #15)''. The description and figure number do not refer to the same pendulum. This document makes a technical amendment by correcting the reference to read, ''Part 572 Subpart E Pendulum (Figure #22)''.

12. 572.181(a)(5) references SAE 1733 Information Report, ''Sign Convention for Vehicle Crash Testing,'' dated July 15, 1986. The correct reference should be to SAE J1733 dated December 1994.

f. Drawing Package and PADI

The petitions for reconsideration suggested minor changes to a number of drawings in the ES–2re drawing package. These requests are discussed below, along with agency responses. Corrections are also made to the PADI. Because the drawings in the drawing package and the PADI are being changed as discussed below, this final rule updates the references to the drawing package, parts list, and PADI incorporated by reference by the December 14, 2006 final rule. The December 2006 final rule referenced materials dated September 2006; today's final rule references a drawing package, parts list, and PADI dated February 2008.

1. Drawing 175–2000, Neck Assembly Test/Cert

Denton stated that the screws listed in item number 5, M6x18, ''are too long and will interfere with the rubber of the neck.'' Denton recommended shortening the length so that item 5 lists screws M6x16.

Agency Response: We agree with the change. The Neck Bracket attachment area has a thickness of 12 mm and the Neck Head & Torso Interface Plate has a thickness of 5.0 mm at threads for a total thickness of 17 mm, thus an 18 mm fastener could possibly interfere with the rubber in the neck. A 16 mm fastener should be sufficient. Thus, on drawing 175–2000, we have modified item number 5 to read ''Screw, SHCS M6x16.'' Conforming changes were also made to the PADI and parts/drawings list.

2. Drawing 175–2002, Neck Intermediate Plate

FTSS indicated that the 8.7 mm dimension in section B–B is incorrect, and should be 9.0 mm. Denton also requested that this dimension be changed to 9 mm, as it was changed from 9.0 mm in the NPRM ''without comment or documentation'' to 8.7 mm in the final rule.

Agency Response: It is not possible to measure this part without destroying it because it is molded into the neck. However, given that both manufacturers have asked for the same value, which is only 0.3 mm from the existing dimension, we have decided to accept the petitioned value. Additionally, as stated by Denton, this dimension was 9 mm in the ES–2re NPRM drawing package, and no reason was provided as to why the value was changed. Accordingly, we are modifying drawing 175–2002 by replacing the dimension 8.7 +0/−0.2 in section B–B with 9.0 +0.0/−0.2.

3. Drawing 175–2004, Half Spherical Screw

FTSS believes that the specification for plating was removed and needs to be added.

Agency Response: The petitioner seeks to reinsert a phrase that was in the original drawing, which called for ''ZINC PLATE AND COLOR PASSIVE PLATE THICKNESS 5 TO 8 MICRONS.'' The petitioner did not provide justification for requiring this finish. However, since referring to this finish would provide some guidance to dummy users, we are adding the following note to drawing 175–2004: ''OPTIONAL FINISH: ZINC PLATE AND COLOR PASSIVE PLATE THICKNESS 5 TO 8 MICRONS.''

4. Drawing 175–2505, Eye Bolt

FTSS recommended removal of the note ''NO UNDER CUT,'' believing it to be unnecessary.

Agency Response: FTSS is correct. We have removed the note ''NO UNDER CUT'' from drawing 175–2505.

5. Drawing 175–3002, Shoulder Spacer Block

FTSS requested that the ''location dimension for dimension M5x12 (B3), center line symbol * * * be added to the left view.'' Denton also commented that there is no location dimension for the M5x12 hole.

Agency Response: We have added a center line symbol to the left view to define the location of the M5x12 DP dimension.

6. Drawing 175–3003, Shoulder ''U'' Spring

FTSS stated that the tolerance ±0.001 is unrealistic, and recommends increasing it to 0.010.

Agency Response: The shoulder response would not be adversely affected by the suggested change, as the shoulder cord plays a much more significant role in the shoulder response. We thus agree to change the tolerance of the 0.710 dimension from ±0.001 to ±0.010.

7. Drawing 175–3004, Shoulder Cam Clavicle Assembly

Denton requested that this drawing have an option note similar to the note on load cell SA572–S72, which allows optional use of M6x16 FHCS instead of M6x16 BHCS.

Agency Response: Although drawing 175–3004 specifies use of M6x18 BHCS, not M6x16 BHCS as the petitioner cited, we assume that the petitioner's issue lies in the optional use of FHCS (rather than screw length). However, as we were considering this suggested change,

we noticed that while drawing 175–3004 specifies use of M6x1x18 BHCS, the corresponding load cell drawing (SA572–S72) specifies M6x1x16 BHCS/FHCS. NHTSA believes that either screw length is acceptable. Nonetheless, since the load cell specifies M6x16 and the petitioner sought to specify the M6x16 length screws, we are changing the screw specification on drawing 175–3004 to M6x1x16. With regard to the petitioner's specific request, the proposed change to optionally allow the use of FHCS would make the shoulder cam clavicle and shoulder load cell structural replacement consistent with the actual shoulder load cell. Accordingly, we have modified drawing 175–3004 by changing item number 3 to read ''SCREW, BHCS M6x1x16'' and adding a note that optionally allows use of FHCS M6x1x16 over the BHCS M6x1x16 of that drawing. (A conforming change was made to the parts/drawings list). Also in this drawing, the description of item #1 was corrected to be ''SHOULDER CAM CLAVICLE ASSY,'' and the spellings of ''CAM'' and ''CLAVICLE'' in revision record C were corrected.

8. Drawings 175–3017, Shoulder Cam Clavicle; 175–3005–2 and 175–3005–3, T-Inserts

In its original petition for reconsideration, FTSS recommended merging drawings 175–3005–2 and 175–3005–3 to prevent damage to the shoulder cam clavicle caused by over-tightening the screws. In an addendum to the petition, FTSS stated that ''a number of ES–2re dummy users have inadvertently used longer screws than specified on the drawing and accidentally cracked the shoulder cam due to the bottoming out of the screws.'' To prevent this, FTSS recommended ''[changing] the threaded insert into a one piece design, with a through thread.'' The drawing for the new part was provided in the FTSS addendum, and given part no. 175–3005–4, ''Insert, Shoulder Cam Load Cell.'' FTSS also recommended that the name of drawing 175–3017 be changed to ''Shoulder Cam Clavicle For Load Cell,'' and that item #1 (175–3005–3, T-insert, M6) be deleted and replaced with ''175–3005–4, Insert, Shoulder Cam Load Cell.''

Agency Response: We understand that FTSS is suggesting that insert 175–3005–2 remain unchanged, and that insert 175–3005–3 should be replaced with 175–3005–4.

With regard to the requested name change for drawing 175–3017, NHTSA sought clarification from FTSS regarding its request. Since the shoulder cam clavicle is compatible with both the load cell and the structural replacement, it was unclear why FTSS recommended that the name specify the load cell alone. FTSS responded that originally, in the ES–2 dummy, there was no clavicle load cell and the part was named ''Shoulder Cam Clavicle.'' When the clavicle load cell was introduced, FTSS re-named the ES–2 part ''Shoulder Cam Clavicle for Load Cell'' to distinguish between the two parts. When the clavicle load cell became standard in the ES–2re NPRM, the part name was changed back to ''Shoulder Cam Clavicle,'' which FTSS stated has caused confusion in the industry. FTSS therefore recommended that the name be changed to ''Shoulder Cam Clavicle for Load Cell'' to eliminate this confusion and for consistency between the ES–2 and ES–2re part names.

After considering this information, NHTSA has determined that the name change to ''Shoulder Cam Clavicle for Load Cell'' may still cause confusion, since the part is compatible with the load cell or structural replacement. However, we have decided that changing the name to ''Shoulder Cam Clavicle for Load Cell or Structural Replacement'' is acceptable.

Thus, we have replaced 175–3005–3 with the FTSS suggested drawing 175–3005–4. However, this part was given the name ''Insert, Shoulder Cam'' due to the fact that it is used in the ''Shoulder Cam Clavicle for Load Cell or Structural Replacement,'' and not in the load cell exclusively. We have updated the drawing views and reference to this part on drawing 175–3017. Also, we have changed the name of 175–3017 to ''Shoulder Cam Clavicle for Load Cell or Structural Replacement,'' as reflected in this drawing as well as in item 1 of drawing 175–3016. Conforming changes were also made to the parts/drawings list.

9. Drawing 175–3018, Shoulder Load Cell, Structural Replacement

Denton stated that this part should have an option note similar to the SA572–S72 load cell note that gives the option to use a countersink for a M6x16 FHCS.

Agency Response: As stated above for drawing 175–3004 (above), the suggested change would make the structural replacement consistent with the load cell. Accordingly, we have modified drawing 175–3018 by adding a note that optionally allows countersinks for M6x16 FHCS.

10. Drawing 175–3007, Elastic Cord Holder

FTSS requested that the phrase ''EXCEPT FOR MOUNTING HOLES'' be deleted from note 3.

Agency Response: This request is denied. Note 3 in drawing 175–3007 actually states ''EXCEPT FOR MOUNTING HOLE CENTERS.'' If a tolerance of ±1 mm were allowed on the hole center dimension, this would allow the hole centers to vary from 69.0 mm to 71.0 mm. The corresponding holes on mating parts 175–3001 ''SHOULDER BOTTOM PLATE'' and 175–3008 ''SHOULDER TOP PLATE'' have centers separated by 70.0 mm ± 0.1 mm (69.9 mm to 70.1 mm). Although the holes in part 175–3007 are clearance holes, their diameter is only 0.3 mm larger than the diameter of the corresponding holes in 175–3001 and –3008. Therefore, to achieve alignment of the clearance and threaded holes, the hole centers of the elastic cord holder and shoulder plate can only differ a maximum of 0.15 mm. The FTSS approach would allow a maximum distance of 0.55 mm between the elastic cord holder hole centers and the shoulder plate hole centers, which would result in the potential for misalignment of the holes.

11. Drawing 175–3010, Shoulder Foam Pad

Denton recommended that a weight of 0.5–0.7 lb be specified ''to help control the reproducibility of the part.''

Agency Response: This request is denied. NHTSA weighed several shoulder foam pads, with samples from each manufacturer. The Denton ATD samples were: Dummy #D038–0.56 lb (0.25 kg) and Dummy #D037–0.53 lb (0.24 kg); while the FTSS samples were: Dummy #016–0.38 lb (0.17 kg) (very soft foam); Dummy #070–0.50 lb (0.25 kg); and Dummy #071–0.41 lb (0.19 kg). Although the majority of the shoulder foam pads would meet the suggested requirement, the requirement is unnecessary because the weight of dummy components is sufficiently defined by the segment weight (in this case, the thorax segment weight defined on 175–0000, sheet 2 of 6). In addition, it is not evident that the shoulder foam pad plays a significant role in the response of the dummy such that tighter controls on the foam pad weight are necessary.

12. Drawing 175–3501, Arm Flesh Assembly, Left/Right

Denton recommended specifying a weight of 2.86 ± 0.22 lb ''to help control the reproducibility of the part.''

Agency Response: This request is denied. Denton's proposed specification

of 2.86 ± 0.22 lb for the arm flesh assembly when converted to the international system of units is equivalent to the 1.3 ± 0.1 kg listed on 175–0000 for the whole arm. The whole arm, as defined on 175–0000, consists of the arm flesh assembly (drawing 175–3501) plus the pivot stop plate (175–3502). Thus the arm flesh alone cannot have the same weight specification as that for the whole arm.

13. Drawing 175–4003, Rib Assembly-Rib Extensions

FTSS stated that ''the two holes of [diameter] 10 on the lower side of the left view (C7) are not used. It was carried from the standard ES–2 design, and shall be removed.'' Similarly, Denton claimed ''two of the holes on the non-struck side are not used for anything. These holes add cost and have no value. We request that they be removed or made optional.''

Agency Response: While there is no obvious function of the holes, the holes might be useful in the manufacturing process for location and/or alignment purposes. Accordingly, we have modified drawing 175–4003 by indicating that the two holes on the lower side of the left view (the non-struck side) are optional.

14. Drawing 175–4004, Rib, Bent Rib Extension

FTSS requested a material change from CS80 to CS70. Additionally, FTSS notes that ''the two holes 2x n4.75 of the left view (C7) is [sic] unnecessary and shall be removed (related to 175–4003).'' Denton gave the same comment as for drawing 175–4003 (above).

Agency Response: As stated above, we agree that the holes are unnecessary and can be made optional. Thus, we have modified drawing 175–4004 by adding ''OPTIONAL'' to the hole note describing the two 4.75 mm diameter holes. With regard to the suggested material change from CS80 to CS70, it is not evident that the change would result in equivalent dummy performance. However, it is noted that the specified material is not a requirement (*i.e.*, it states ''Material Ref.'' where Ref. is short for ''Reference''). As such, the manufacturer is free to use the material of its choice, provided that the final assembly complies with all the applicable performance requirements, such as rib drops and thorax impacts. Accordingly, we have denied the request to change the material to CS70.

15. Drawing 175–4010, Rail Guide Assembly

Denton stated that the bushing, item 6, is an extra part that should be made optional as it ''adds cost and no value if item 2 is made without a counterbore.'' This request is related to that for drawing 175–4012 below.

Agency Response: We agree to make item 6 (bushing) optional. See response relating to drawing 175–4012 below.

16. Drawing 175–4011, M-Rail

FTSS noted a location dimension of 3.5 mm from the center line needs to be added for the threaded hole 4xM3x.5. Denton also noted that these holes (2 on each end of part) do not have location dimensions.

FTSS also requested that a note stating ''clearance cut when necessary'' be added and point to the tip of the ''V'' groove. Similarly, Denton requested ''that an undercut be allowed at the bottom of the V-groove as an option to simplify the manufacturing,'' as it will not ''change the functionality of the part.''

Agency Response: The agency agrees with the request to add a location dimension for the 4xM3x.5 hole. Additionally, using a clearance cut (or undercut) is a common manufacturing process for this type of V-groove feature and will not affect performance in any way. We have thus modified drawing 176–4011 to add dimensions to define the locations of the 4xM3x.5 holes, and a note ''CLEARANCE CUT WHEN NECESSARY'' to point to the tip of the V-groove.

17. Drawing 175–4012, V-Rail

Denton stated that the bushing (item 6 in 175–4010) is unnecessary and can rattle. They therefore request that the 8.5 mm counterbore in the V-rail be listed as optional so that this bushing can be left out to reduce costs.

Agency Response: We agree that the bushing is unnecessary and have made its use optional in drawing 175–4010 (above). Since the bushing is optional, we have modified drawing 175–4012 by adding a note that the counterbores are optional.

18. Drawing 175–4020, Piston Thorax

Denton requested that the M2.5 threaded hole be made 7 mm deep instead of 6 mm to make sure that the long screw (item 15 on 175–4006) does not bottom out.

Agency Response: We agree. The suggested change will not affect performance. We have modified the M2.5 dimension to indicate 7.0 mm of depth instead of 6.0 mm.

19. Drawing 175–4022, Transducer Mount Thorax

Denton stated that the screws and potentiometer could make contact in the current configuration. To prevent contact, Denton requested that the 9.2 mm dimension be increased to 9.35 mm.

Agency Response: We agree. The agency believes that this request will eliminate the potential for damaging the potentiometer housing due to interference with the fastener, without affecting the dummy's performance. Thus, we have modified drawing 175–4022 by increasing the 9.2 mm dimension to 9.35 mm.

20. Inconsistency Between Drawing 175–4040, Spring 16.4 N/mm Black, and PADI

As discussed in the preamble, the petitioners pointed out an inconsistency between the drawing and the PADI manual (page 29, table 5.9) as to the spring rate of 16.4 N/mm versus 16.6 N/mm.

Agency Response: As discussed in the preamble, the spring rate of 16.4 N/mm shown in the drawing is correct. We have corrected the PADI to provide a spring rate of 16.4 N/mm.

21. Drawings 175–4040 (Spring 16.4 N/mm Black), 175–4041 (Spring 13.8 N/mm White), 175–4042 (Spring 19.0 N/mm Blue)

As discussed in the preamble, the petitioners recommended changes to the tolerance values for the spring rates shown in Note 2 of all three drawings.

Agency Response: As discussed in the preamble, we revised drawings 175–4040, 175–4041 and 175–4042 to specify a spring rate tolerance of ±1.0 N/mm.

22. Drawings 175–4032 (Rib Accelerometer Mount), SA572–S81 (Accelerometer Mount, Head C.G.), SA572–S82 (Accel Mounting Block, Upper Spine/Pelvis SA572–S4), SA572–S83 (Accel Mount Block, Spine T12 SA572–S4)

Denton recommended adding a note that instructs machinist to scribe ''M1.4'' near one set of these holes to indicate that metric screws are necessary for mounting the accelerometers and to prevent possible damage to the holes if standard screws were used.

Agency Response: We agree that the note is desirable to make clearer the type of fastener required for this application, as it is unusual to use a metric fastener for this application. However, inasmuch as this inscription is only for convenience, we have made the note ''Optional.'' We have thus modified the above drawings by adding

a note that the machinist can optionally scribe M1.4 near one of the holes to indicate that metric screws are to be used. Additionally, for drawing 175–4032, Rib Accelerometer Mount, two M1.6 holes are also present on the same face of this part; thus, a separate note was added to optionally scribe ''M1.6'' near this set of holes.

23. Drawing 175–5010, Abdomen Molded Assembly, Certified

Denton recommended specifying the weight of this component to be 7.0–9.0 lb ''to help control the reproducibility of the part.''

Agency Response: We are denying this request. The abdomen molded assembly weight is sufficiently specified by the abdominal assembly weight on sheet 2 of 175–0000. Further, the agency weighed a sample molded abdomen assembly from manufacturers Denton and FTSS. The Denton dummy was: #D038—8.03 lb (3.64 kg); while the FTSS dummy was: #016—8.29 lb (3.76 kg). Both manufacturers met the suggested requirement in the absence of the weight specification.

24. Drawing 175–5012–1, Ballast, Lead, Left and Drawing 175–5012–2, Ballast, Lead, Right

Denton noted that drawing 175–5012–1 is found twice in the drawing package, where revision notes are included on one drawing but not the other. FTSS and Denton noted that drawing 175–5012–2, Ballast Lead, Right, was not included in the drawing package.

FTSS also recommended renaming drawing 175–5012–1[16] as ''Ballast, Left'' and changing the note ''LEAD FILLED SLAB'' to ''LEAD OR EQUIVALENT FILLED SLAB.'' The petitioner stated that adding ''or equivalent'' would allow dummy manufacturers to use materials other than lead in the future. FTSS also wanted NHTSA to add ''or equivalent'' to the missing drawing 175–5012–2 for the same reason.

Agency Response: With regards to 175–5012–1 being found twice in the drawing package and 175–5012–2 not at all, we have named the first drawing 175–5012–1 ''BALLAST, LEFT.'' We have changed the number and name of the second copy of drawing 175–5012–1 to 175–5012–2, ''BALLAST, RIGHT,'' respectively. Further, we agree that changing the note ''LEAD FILLED SLAB'' to ''LEAD OR EQUIVALENT FILLED SLAB'' for both drawings would allow the use of alternate materials, and that the change will not affect the dummy's performance. We have changed the titles of the revised drawings to ''BALLAST, LEFT'' and ''BALLAST, RIGHT,'' to reflect the fact that the part would not necessarily be made of lead. Conforming changes were also made to the parts/drawings list.

25. Drawing 175–5501, Lumbar Spine Molded

FTSS stated that the 135 mm length dimension should be changed to 136 mm.

Agency Response: This part is a common part with the Hybrid II 50th male spine, which is defined in ATD–7102 as 5.375 inches, or 136.5 mm. NHTSA measured samples from each dummy manufacturer. The results were: Denton #D038 = 135 mm; FTSS #016 = 137 mm. Thus it appears that both manufacturers could meet the suggested dimension and the change would be consistent with the part used in the Hybrid II dummy. Thus, we have modified drawing no. 175–5501 by changing the 135±2 dimension to 136±2.

26. Drawing 175–6041, Sacrum Cover Plate

FTSS stated that the optional cut out shown in C3 and detail A should be removed because it is unnecessary.

Agency Response: The request is denied. The optional cutout is in place to allow instrumentation cables to exit from the dummy without being pinched. FTSS dummies have clearance for cables without this cutout but Denton dummies do not have sufficient clearance, and thus the cutout is needed. It is noted that the cutout is optional; therefore if FTSS does not want to include the cutout, it is entirely acceptable to omit it. Accordingly, the cutout will remain optional. However, we are correcting the spelling of the word ''MATERIAL'' in the drawing.

27. Drawing 175–6045, Lumbar Mounting Plate

FTSS requested removal of the 3x120° dimension and updating of the isometric view of the part to show the 4-hole pattern. Likewise, Denton requested the updating of all views (isometric and side view) to show the 4-hole pattern, and removal of the ''extra angle dimension.''

Agency Response: We agree with the suggested changes. The original design of the mounting plate was for a 3-hole pattern. The mistakes identified by the petitioners have been carried over from the original design. NHTSA has revised the isometric and side views and has removed the unnecessary angle dimension in drawing 175–6045 to show the 4-hole pattern that is illustrated in the top view. Correction was also made to the pelvis assembly drawing, 175–6000 to show the 4-hole pattern on this part, and the quantity of item 28 (screw, SHCS ¼–20 x ⅝) on 175–6000 was increased to 4. Conforming changes were also made to the PADI and parts/drawings list.

28. Drawing 175–6050, Pelvis Molded, Certified

Denton recommended specifying the weight of this part as 6.5–6.9 lb ''to help control the reproducibility of the part.''

Agency Response: This request is denied. NHTSA weighed sample parts from each manufacturer and they both met the suggested tolerance. Nonetheless, the segment weights specified in 175–0000, sheet 2 of 6, sufficiently define the dummy's weight distribution.

29. Drawing SA572–S53, Rotary Potentiometer

Denton recommended reducing the independent linearity to ±0.10%. They claim that the current ±0.25% value allows for an error of ±0.88° (a total of 1.75°), which is greater than 10% of the width of the neck and lumbar corridors (10°). A ±0.10% linearity value would allow for a total error of only 0.7°, and potentiometers can be purchased with this tolerance level.

Agency Response: The request is denied. While the suggested potentiometer would provide less error in measuring the dummy's response, it is not clear there is a problem that needs addressing, or what the cost ramifications of the suggested change would be. We do not believe it would be appropriate to introduce this change at this time.

30. Drawing SA572–S70, 6 Axis Upper Neck Load Cell

FTSS recommended removing the Y axis symbol on the main view and the Z axis symbol on the right view because they ''do not follow J211 sign convention and are unnecessary.'' FTSS also believed that My,oc is calculated with a minus sign rather than a plus sign. Denton stated that the sign between terms for calculating My,oc should be '−' rather than '+'. Denton also recommended removing the Y and Z arrows from the side and top view, as they are incorrectly labeled: ''the load cell side view shows Z force in compression, this is incorrect. The load cell top view shows the top of the load cell to the right, this is incorrect.'' Denton recommended keeping only the arrows under the isometric view.

[16] In its petition, FTSS referred to Drawing 175–5011–1 regarding this matter. Based on the context of the petition, we assume that FTSS meant to refer to Drawing 175–5012–1 when it referred to drawing 175–5011–1.

Agency Response: We agree that the Y- and Z-axis symbols are confusing and should be removed. Additionally, the My,oc formula is incorrect as currently written on the print and the ''+'' should be a '' – ''. Accordingly, we have modified drawing SA572–S70 by removing the Y- and Z-axis symbols from the top and side views, and by correcting the formula for My,oc as petitioned. The spelling of ''Newton'' in ''Newton-Meters'' was also corrected.

31. Drawing SA572–S71–1, Lower Neck Load Cell Assembly

FTSS recommended removing the X–Z coordinate system between the top and side views, as it is incorrect (according to SAE J211 sign convention) and unnecessary. Denton made a similar recommendation for this drawing, but referenced all three drawings of this assembly (SA572–S71–1, –2 and –3).

Agency Response: The petitioners' comments are correct. It is assumed that Denton was referring only to the side view polarity arrows in drawing SA572–S71–1, but as polarity arrows were also provided on drawing SA572–S71–2, it is recommended that these be removed as well. We have removed the polarity arrows in drawings SA572–S71–1 and –2.

32. Drawing SA572–S71–3, Lower Neck Load Cell-Mounting Bracket

Denton recommended deleting this drawing, as the base shown is ''specific to a lower neck load cell manufactured by FTSS.'' The Denton mounting bracket has a different hole pattern. Denton claimed that ''drawing SA572–S71–1 can define the assembly,'' with dimensions added to specify the overall size dimensions of the assembly.

Agency Response: Because no additional details were provided in the petition, the agency requested that the petitioner provide more information supporting its request. (A September 14, 2007 memorandum describes this communication with Denton, see Docket NHTSA–2006–25441–0020.) Denton provided a suggested method for adding dimensions to the drawing specifying the overall size of the mounting bracket and ensuring that the load cell is properly located. (*Id.*) The agency has evaluated the petitioner's recommendation and has determined that it is acceptable. Thus, as petitioned, drawing SA572–S71–3 is removed, and critical dimensions are added to drawing SA572–S71–1 to define the mounting bracket. Additionally, load cell information from drawing SA572–S71–2 is moved to drawing SA572–S71–1 and SA572–S71–2 is also removed from the drawing package. The ''REV'' and ''No. SHT'' entries for drawings SA572–S71–2 and SA572–S71–3 were removed from the parts/drawings list, but the parts remain on the list since they are referenced on drawing SA572–S71–1.

33. Drawing SA572–S76, Lumbar Load Cell

FTSS stated that the X and Y symbols below the side and top view should be removed, as they ''do not follow SAE J211 sign convention and are unnecessary.'' Denton made a similar comment, and added that the axes label under the isometric view should remain in the drawing. Denton also stated that Fx in the channel list should be changed to Fz.

Agency Response: The petitioners' comments are correct. We have modified the drawing to remove the X–Y and X–Z coordinate system symbols from the top and side views of drawing SA572–S76. In the channel list, ''F_x'' has been changed to ''F_z''.

34. Drawing SA572–S77, Pubic Load Cell

FTSS recommended removing the ''Y'' symbol because ''it can be installed both ways and may not reflect the SAE J211 sign convention.'' Denton recommended either reversing the arrow for Fy polarity ''or [moving it] to the other side of the load cell to show tension on the load cell for correct polarity.''

Agency Response: It is not essential to show the load cell polarity on this drawing, therefore we have deleted the ''Y'' symbol from the side view of drawing SA572–S77.

35. Drawing SA572–S81, Accelerometer Mount, Head C.G.

It was brought to NHTSA's attention by FTSS that the ES–2re head assembly drawings do not allow for placement of the three head accelerometers such that their axis intersection point [17] coincides with the head center of gravity. Specifically, the z-axis location of the axis intersection point is 4.6 mm below the head CGz location as specified in drawings 175–0000 sheet 2 of 6 and 175–1000.

Agency Response: To rectify this situation, the agency is modifying the head accelerometer mount (SA572–S81) by increasing its thickness 4.6 mm. This change raises the mounting location of the x- and y-axis accelerometers, thereby raising the z-axis location of the axis intersection point.

36. Drawing SA572–S82, ''Accel Mounting Block, Upper Spine/Pelvis SA572–S4''

Denton recommended adding a hole note to define the M1.4 threaded holes.

Agency Response: The petitioner is correct that the tapped hole note is missing. We have revised drawing SA572–S82 by adding a hole note as Denton suggested.

37. Weight and Center of Gravity (CG)

FTSS stated that they are currently evaluating weight and CG specifications, and ''will submit recommended values if different than the Final Rule drawings.''

Agency Response: FTSS did not provide additional information regarding the weight and CG specifications of the ES–2re dummy. The weight and CG specifications listed in the December 14, 2006 final rule are unchanged.

38. Other Changes to Drawing Package, PADI, and Parts/Drawings List

- The revision letters on the drawings and in the parts/drawings list were updated for all changed drawings.
- Drawing 175–3000, Shoulder Assembly: The description of item 4, ''Shoulder Cam Clavicle Assembly for Loadcell'' was corrected to be ''Shoulder Cam Clavicle Assembly''. The revision was updated on the drawing and parts/drawings list as a result of this change.
- Parts/Drawings List, Drawing 175–3016: The spelling of the drawing name was corrected.
- PADI, page 2: The docket number and the Web site for the location of the revised drawings were updated.
- PADI, page 31: The spelling of ''too'' was corrected.

V. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review,'' provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. This rulemaking action was not considered a significant regulatory action under Executive Order 12866. This rulemaking action was also determined not to be significant under the Department of Transportation's (DOT's) regulatory policies and procedures (44 FR 11034, February 26, 1979).

[17] Each accelerometer has one axis (called a seismic axis) along which it measures acceleration. The axis intersection point is the location in space where the seismic axes from each of the three head accelerometers meet.

NHTSA's specifications in 49 CFR Part 572 for a 50th percentile adult male side impact dummy that the agency will use in research, compliance tests of the Federal side impact protection safety standards, and consumer information programs do not impose any requirements on anyone. Businesses would be affected only if they choose to manufacture or test with the dummy. The cost of an uninstrumented ES–2re is in the range of $54–57,000. Instrumentation adds approximately $43–47,000 for minimum requirements and approximately $80–84,000 for maximum instrumentation to the cost of the dummy, depending on the number of data channels the user chooses to collect. The amendments made in today's document will not affect the cost of the dummy. Because the economic impacts of this final rule are minimal, no further regulatory evaluation is necessary.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions), unless the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)).

We have considered the effects of this rulemaking under the Regulatory Flexibility Act. I hereby certify that this rulemaking action will not have a significant economic impact on a substantial number of small entities. This action will not have a significant economic impact on a substantial number of small entities because the rule does not impose or rescind any requirements for anyone. The amendments made in this document will not affect the cost of the dummy. NHTSA does not require anyone to manufacture the dummy or to test vehicles with it.

National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop a 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the regulation.

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications because 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.'' Moreover, the amendments made in this document will not affect the cost of the dummy.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating an NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This rule does not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rule does not meet the definition of a Federal mandate because it does not impose requirements on anyone. Further, it will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. The amendments made in this document will not affect the cost of the dummy. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Civil Justice Reform

Pursuant to Executive Order 12778, ''Civil Justice Reform,'' we have considered whether this rule will have any retroactive effect. This rule does not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the States from adopting laws or regulations on the same subject, except that it does preempt a State regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid control number from the Office of Management and Budget (OMB). This final rule does not have any requirements that are considered to be information collection requirements as defined by the OMB in 5 CFR Part 1320.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The following voluntary consensus standards have been used in developing the ES–2re dummy:

• SAE Recommended Practice J211, Rev. Mar95 ''Instrumentation for Impact Tests''; and

• SAE J1733 of 1994–12, ''Sign Convention for Vehicle Crash Testing.''

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating an NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency 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.

This final rule will not impose any unfunded mandates under the UMRA. This rule does not meet the definition of a Federal mandate because it does not impose requirements on anyone. This rule affects only those businesses that choose to manufacture or test with the dummy, and even in that regard, the amendments made in this document will not affect the cost of the dummy. This rule does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Has the agency organized the material to suit the public's needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could the agency improve clarity by adding tables, lists, or diagrams?

—What else could the agency do to make this rule easier to understand?

If you have any responses to these questions, please write to us about them.

Regulation Identifier Number

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Appendix A to Preamble—The Test Procedures and Performance Specifications of the December 14, 2006 Final Rule for Qualification of the ES–2re

• Head Assembly: The head is tested by a similar procedure as the Hybrid III 50th percentile male frontal crash test dummy. It involves dropping the head from a specified height and angular orientation, and measuring the acceleration that results from the impact. However, while the head of the Hybrid III 50th percentile male receives impact to the forehead, the ES–2re head is dropped so that the lateral surface of the head is impacted.

• Neck Assembly: See discussion in preamble.

• Lumbar Spine: See discussion in preamble.

• Shoulder Assembly: The dummy is seated on a flat, horizontal, rigid surface in a position as specified in the regulatory text. An impactor is then used to contact the shoulder at a velocity of 4.3 m/s. Qualification of the dummy is based on the peak acceleration of the impactor during this contact.

• Thorax (upper torso) Assembly: See discussion in preamble.

• Abdomen Assembly: The ES–2re is seated in a specified manner and impacted on its side at the center point of the middle load-measuring sensor at a velocity of 4.0 m/s. The maximum impactor force and the sum of the forces measured by three abdominal load sensors, in time, are used to assess the dummy's quality for compliance testing.

• Pelvis: The ES–2re pelvis response is tested with a whole, seated dummy. An impactor contacts a specified location of the pelvis at a velocity of 4.3 m/s. The force of the impactor and the load measured in the pubic symphysis in time are evaluated to assure that dummy performance is within specifications.

List of Subjects in 49 CFR Part 572

Incorporation by reference, Motor vehicle safety.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 572 as follows:

PART 572—ANTHROPOMORPHIC TEST DEVICES

■ 1. The authority citation for part 572 continues to read as follows:

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

Subpart U—ES–2re Side Impact Crash Test Dummy, 50th Percentile Adult Male

■ 2. Section 572.180 is amended by revising paragraph (a)(1), the introductory paragraph of (a)(2), paragraphs (a)(3), (b), and (c)(1), to read as follows:

§ 572.180 Incorporated materials.

(a) * * *

(1) A parts/drawing list entitled, ''Parts/Drawings List, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES2re), February 2008,''

(2) A drawings and inspection package entitled ''Parts List and Drawings, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES–2re, Alpha Version), February 2008,'' consisting of:

* * * * *

(3) A procedures manual entitled ''Procedures for Assembly, Disassembly and Inspection (PADI) of the EuroSID–2re 50th Percentile Adult Male Side Impact Crash Test Dummy, February 2008,'' incorporated by reference in §§ 572.180(a)(2), and 572.181(a);

* * * * *

(b) The Director of the Federal Register approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the materials may be inspected at the Department of Transportation, Docket Operations, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, telephone (202) 366–9826, and at the National Archives and Records Administration (NARA), and in electronic format through *Regulations.gov.* For information on the availability and inspection 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. For information on the availability and inspection of this material at *Regulations.gov*, call 1–877–378–5457, or go to: *http://www.regulations.gov*.

(c) * * *

(1) The Parts/Drawings List, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES2re), February 2008, referred to in paragraph (a)(1) of this section, the Parts List and Drawings, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES–2re, Alpha Version), February 2008, referred to in paragraph (a)(2) of this section, and the PADI document referred to in paragraph (a)(3) of this section, are available in electronic format through Regulations.gov and in paper format from Leet-Melbrook, Division of New RT, 18810 Woodfield Road, Gaithersburg, MD 20879, telephone (301) 670–0090.

* * *

■ 3. Section 572.181 is amended by revising paragraphs (a), (b), and (c), to read as follows:

§ 572.181 General description.

(a) The ES–2re Side Impact Crash Test Dummy, 50th Percentile Adult Male, is defined by:

(1) The drawings and specifications contained in the ''Parts List and Drawings, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES–2re, Alpha Version), February 2008,'' incorporated by reference in § 572.180, which includes the technical drawings and specifications described in Drawing 175–0000, the titles of which are listed in Table A;

TABLE A

Component assembly	Drawing number
Head Assembly	175–1000
Neck Assembly Test/Cert	175–2000
Neck Bracket Including Lifting Eyebolt.	175–2500
Shoulder Assembly	175–3000
Arm Assembly-Left	175–3500
Arm Assembly-Right	175–3800
Thorax Assembly with Rib Extensions.	175–4000
Abdominal Assembly	175–5000
Lumbar Spine Assembly	175–5500
Pelvis Assembly	175–6000
Leg Assembly, Left	175–7000–1
Leg Assembly, Right	175–7000–2
Neoprene Body Suit	175–8000

(2) ''Parts/Drawings List, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES2re), February 2008,'' containing 8 pages, incorporated by reference in § 572.180,

(3) A listing of available transducers-crash test sensors for the ES–2re Crash Test Dummy is shown in drawing 175–0000 sheet 4 of 6, dated February 2008, incorporated by reference in § 572.180,

(4) Procedures for Assembly, Disassembly and Inspection (PADI) of the ES–2re Side Impact Crash Test Dummy, February 2008, incorporated by reference in § 572.180,

(5) Sign convention for signal outputs reference document SAE J1733 Information Report, titled ''Sign Convention for Vehicle Crash Testing'' dated December 1994, incorporated by reference in § 572.180.

(b) Exterior dimensions of ES–2re test dummy are shown in drawing 175–0000 sheet 3 of 6, dated February 2008.

(c) Weights of body segments (head, neck, upper and lower torso, arms and upper and lower segments) and the center of gravity location of the head are shown in drawing 175–0000 sheet 2 of 6, dated February 2008.

* * * * *

■ 4. Section 572.183 is amended by revising paragraphs (b)(1), (b)(5), the heading of Table 1 to Paragraph (a), and paragraph (c)(1), to read as follows:

§ 572.183 Neck assembly.

* * * * *

(b) * * *

(1) Soak the neck-headform assembly in a test environment as specified in § 572.189(n);

* * * * *

(5) Time zero is defined in § 572.189(j).

Table 1 to Paragraph (a)—ES–2re Neck Certification Pendulum Velocity Corridor

* * * * *

(c) * * *

(1) The pendulum deceleration pulse is to be characterized in terms of decrease in velocity as determined by integrating the filtered pendulum acceleration response from time-zero.

* * * * *

■ 5. Section 572.185 is amended by revising paragraphs (b)(1)(i) and (c)(2), to read as follows:

§ 572.185 Thorax (upper torso) assembly.

* * * * *

(b) * * *

(1) * * *

(i) Soak the rib modules (175–4002) in a test environment as specified in 572.189(n);

* * * * *

(c) * * *

(2) *Performance Criteria*.

(i) The individual rib modules shall conform to the following range of deflections:

(A) Upper rib not less than 34 mm and not greater than 41 mm;

(B) Middle rib not less than 37 mm and not greater than 45 mm;

(C) Lower rib not less than 37 mm and not greater than 44 mm.

(ii) The impactor force shall be computed as the product of the impact probe acceleration and its mass. The peak impactor force at any time after 6 ms from time zero shall be not less than 5100 N and not greater than 6200 N.

■ 6. Section 572.187 is amended by revising paragraphs (b)(1) and (b)(5), to read as follows:

§ 572.187 Lumbar spine.

* * * * *

(b) * * *

(1) Soak the lumbar spine-headform assembly in a test environment as specified in § 572.189(n);

* * *

(5) Time zero is defined in § 572.189(j).

* * * * *

■ 7. Section 572.188 is amended by revising paragraph (b)(4), adding paragraph (b)(6), and revising paragraph (c), to read as follows:

§ 572.188 Pelvis.

* * * * *

(b) * * *

(4) The impactor is guided, if needed, so that at contact with the pelvis its longitudinal axis is within ±0.5 degrees of a horizontal plane and perpendicular to the midsagittal plane of the dummy and the centerpoint on the impactor's face is within 5 mm of the center of the H-point in the pelvis, as shown in Figure U6 in Appendix A to this subpart;

* * *

(6) Time zero is defined in § 572.189(k).

(c) *Performance criteria*.

(1) The impactor force (probe acceleration multiplied by its mass) shall be not less than 4,700 N and not more than 5,400 N, occurring between 11.8 ms and 16.1 ms from time zero;

(2) The pubic symphysis load, measured with load cell specified in § 572.189(f) shall be not less than 1,230 N and not more than 1,590 N occurring between 12.2 ms and 17.0 ms from time zero.

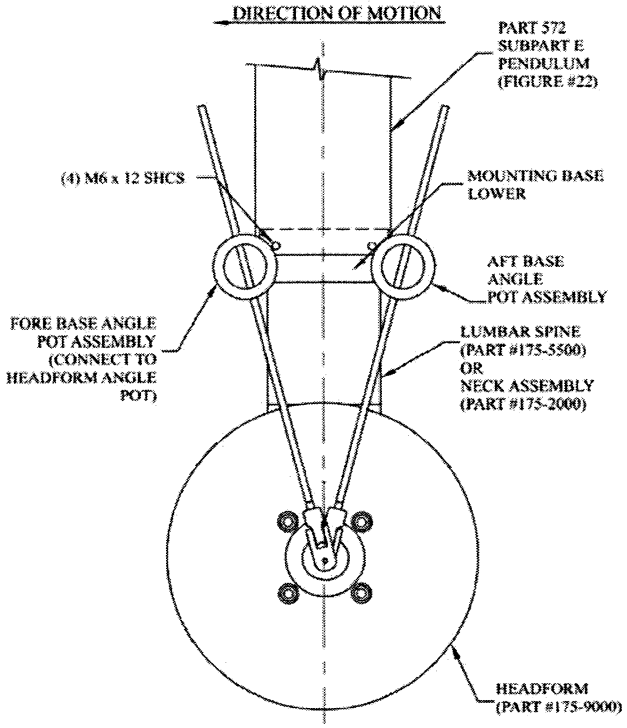
■ 8. Figure U2–A in ''APPENDIX A TO SUBPART U OF PART 572—FIGURES'' is revised to read as follows:

Appendix A To Subpart U Of Part 572—Figures

* * *

Figure U2-A

NECK/LUMBAR SPINE/HEADFORM ATTACHED TO PENDULUM



* * * * *

Issued: May 30, 2008.

James F. Ports, Jr.,

Deputy Administrator.

[FR Doc. E8–13063 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080123074–8654–02]

RIN 0648–AW31

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Scallop Dredge Exemption Areas; Addition of Monkfish Incidental Catch Trip Limits

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

ACTION: Final rule.

SUMMARY: This action modifies the regulations implementing the Northeast (NE) Multispecies Fishery Management Plan (FMP) to create three NE Multispecies Scallop Exemptions that are identical to the current scallop exemptions, except for the addition of an incidental monkfish catch limit. These new scallop exemptions are restricted to vessels issued either a General Category Atlantic sea scallop permit or a limited access Atlantic sea scallop permit (when not fishing under a scallop days-at-sea (DAS) limitation), when fishing for scallops with small dredge gear (combined width not to exceed 10.5 ft (3.2 m)). Vessels that land an incidental catch of monkfish within these new scallop exemptions are required to possess, and have onboard, a valid limited access monkfish permit, or an open access monkfish Incidental Catch permit. The intent of this action is to allow small scallop dredge vessels to land monkfish that are currently being discarded, consistent with the bycatch reduction objectives of the FMP and National Standard 9 of the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Effective July 16, 2008.

ADDRESSES: Copies of this regulatory amendment, and its small entity compliance guide, are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930. The small entity compliance guide is also accessible via the Internet at *http://www.nero.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Timothy Cardiasmenos, Fishery Policy Analyst, phone (978) 281–9204, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Current regulations, implemented under Framework Adjustment 9 to the FMP, and expanded under Amendment 7 to the FMP, contain a NE multispecies fishing mortality and bycatch reduction measure that is applied to the Gulf of Maine (GOM), Georges Bank (GB), and Southern New England (SNE) Exemption Areas. This measure prohibits vessels from fishing in these areas unless they are fishing under a NE multispecies or a scallop DAS allocation, are fishing with exempted gear, are fishing under the Small Vessel Handgear (A or B) or Party/Charter permit restrictions, or are fishing in an exempted fishery. The procedure for adding, modifying, or deleting fisheries from the list of exempted fisheries is found in § 648.80. A fishery may be exempted by the Administrator, Northeast Region, NMFS (RA), after consultation with the New England Fishery Management Council (Council), if the RA determines, based on available data or information, that the bycatch of regulated species is, or can be reduced to, on average, less than 5 percent per trip, by weight on board, and that such

exemption will not jeopardize the fishing mortality objectives of the FMP.

At present, there are three scallop exemptions for scallop dredge vessels when fishing under the open access scallop General Category permit, or under the limited access scallop permit when not fishing under a scallop DAS. They are referred to as: The GOM Scallop Dredge Exemption Area, established in Framework 21 to the FMP (February 1997); the SNE Scallop Dredge Exemption Area, established in Amendment 13 to the FMP (April 2004); and the Great South Channel (GSC) Scallop Dredge Exemption Area, established by the authority of the RA (August 2006). On November 2, 2007, a request was submitted on behalf of the General Category scallop fleet to establish an incidental monkfish catch limit of 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip, consistent with the Monkfish FMP, within the three scallop exemptions. This rule creates three new exemptions, identical to the existing scallop exemption areas, described at § 648.80(a)(11)(i)(A), (a)(18)(ii)(A), and (b)(11)(ii)(A), with the addition of a 50–lb (23–kg) tail weight or 166–lb (75–kg) whole weight incidental monkfish catch limit per trip, provided the fishery does not jeopardize the fishing mortality objectives of the FMP.

The data analyzed for this action consist of observer data from both General Category and limited access scallop dredge trips within the GOM, GSC, and SNE scallop exemption areas from 2001 to 2007. A total of 85 General Category trips and 198 limited access trips were observed during that period. Bycatch rates were calculated on a trip-by-trip basis by adding up the total weight of NE multispecies, scallops (in-shell weight), and all other catch on each observed trip, and then calculating the percentage of the total catch represented by regulated NE multispecies. The percent bycatch of regulated NE multispecies in the exemption areas ranged from 0 to 10.33 percent in General Category trips (N=85), and 0 to 8.6 percent in limited access trips (N=198). The mean percent bycatch of regulated NE multispecies by weight of the total catch across all areas in the General Category and limited access fisheries was less than 1 percent. From a total of 85 observed General Category trips into the exemption areas, the mean percent bycatch was 0.97 percent of the total catch. From the 198 observed limited access scallop dredge trips into those same areas, the mean percent bycatch was estimated to be 0.93 percent of the total catch.

Monkfish discards were analyzed within this same dataset. Monkfish discards within the current exemption areas ranged from 0 to 611 lb (0–277 kg) tail weight per trip in the General Category fishery (N=85). From a total of 85 General Category trips into the current exemption areas, the mean monkfish discard was 48.1 lb (22 kg) tail weight per trip, and the mean trip was 0.44 days (11 hr). This action will allow a level of monkfish incidental bycatch within the scallop exemptions of 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip. This level of monkfish fishing mortality from scallop dredge vessels is within the allowable limit specified under Framework 4 of the Monkfish FMP (72 FR 53942, September 21, 2007; i.e., 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip).

GSC Scallop Dredge Exemption Area

From a total of 38 observed General Category trips into the current GSC Scallop Exemption, the mean monkfisk catch per trip was 28.98 lb (13 kg) tail weight, and only 1 trip discarded more than 150 lb (68 kg) tail weight. Monkfish bycatch ranged between 0–302.71 lb (0–137 kg) tail weight per trip.

GOM Scallop Dredge Exemption Area

From a total of 29 observed General Category trips into the GOM Scallop Exemption, the mean monkfish catch per trip was 40.6 lb (18 kg) tail weight, and only 3 trips discarded in excess of 150 lb (68 kg) tail weight. Monkfish bycatch ranged between 0–425 lb (0–193 kg) tail weight per trip.

SNE Scallop Dredge Exemption Area

From a total of 18 observed General Category trips into the SNE Scallop Exemption, the mean monkfish catch per trip was 100.5 lb (46 kg) tail weight, and only 3 trips discarded more than 150 lb (68 kg) tail weight. Monkfish bycatch ranged between 0–611 lb (277 kg) tail weight per trip.

The observed level of monkfish discard within the current scallop exemptions, as detailed above, is consistent with the monkfish incidental catch limit instituted by this action. This level of monkfish fishing mortality in the General Category scallop dredge fleet was previously analyzed within Framework 4 to the Monkfish FMP. Since the data indicate that the monkfish incidental catch limit instituted by this action is currently being discarded, no change in fishing behavior is expected, and it is not anticipated that there will be an increase in regulated species bycatch. These new scallop exemptions are identical to the existing scallop exemptions, with the addition of an incidental catch of monkfish, and are therefore expected to meet both the bycatch and the fishing mortality requirements of the regulations. Public comment regarding this action was solicited in the proposed rule (73 FR 23175, April 29, 2008). The comment period closed on May 14, 2008.

Management Measures

GOM, SNE, and the GSC Scallop Dredge Exemption Areas

Based on the analysis of available data, the bycatch of regulated species by scallop dredge vessels is less than, on average, 5 percent per trip, by weight on board, within the exemption areas and the monkfish bycatch is consistent with the incidental catch level analyzed within the Monkfish FMP. The data analysis shows that, on average, scallop dredge vessels are currently discarding 48.1 lb (22 kg) tail weight of monkfish per trip within the three exemption areas, a level consistent with the monkfish incidental catch (50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip) instituted by this action. In addition, there are no data to suggest that modifying the present exemptions to accommodate a monkfish incidental catch at 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip would cause a shift in effort towards monkfish or NE multispecies. Therefore, the RA has determined that a monkfish incidental catch of 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip, within the GOM, SNE, and GSC Scallop Exemptions, meets the exemption requirements specified in § 648.80(a)(8), and would not be inconsistent with the monkfish fishing mortality goals of the Monkfish FMP.

Therefore, this rule creates three scallop exemptions (GOM, SNE, and GSC), identical to the existing scallop exemptions, with the addition of a 50–lb (23–kg) tail weight or 166–lb (75–kg) whole weight per trip monkfish incidental catch possession limit. These new scallop exemptions are restricted to vessels issued either a General Category Atlantic sea scallop permit or a limited access sea scallop permit (when not fishing under a scallop DAS limitation), when fishing with small dredges (combined width not to exceed 10.5 ft (3.2 m)). Vessels that land an incidental catch of monkfish within these new scallop exemptions are required to possess, and have onboard, a valid limited access monkfish permit, or a monkfish open access Incidental Catch permit.

Changes From the Proposed Rule

There was one comment received in support of the proposed rule, and there are no substantive changes to the proposed rule. Additional language was added to the final rule, to clarify that scallop dredge vessels that land an incidental catch of monkfish within these new scallop exemptions, who do not currently possess a monkfish permit, must obtain a monkfish open access Incidental Catch permit.

Classification

NMFS has determined that this final rule is consistent with the FMP and has determined that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

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. There are no Federal rules that duplicate, overlap, or conflict with the final rule. This action creates three scallop exemptions for General Category scallop vessels, or limited access scallop vessels not fishing on a DAS allocation, identical to the current scallop exemptions, with the addition of an incidental catch of monkfish. This action was categorically excluded under the National Environmental Policy Act, as an action that includes minor technical additions, corrections, or changes to an FMP.

The economic impacts of the action are expected to be minimal and positive. This action allows the General Category scallop fleet, while fishing under a scallop exemption, to land up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip, in addition to scallops. This allows the fleet to utilize these resources in a manner consistent with the bycatch and mortality objectives of the FMP. This action allows a small incidental catch of monkfish, and as such is expected to minimally increase revenues for scallop dredge vessels fishing under the General Category permit provisions.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the action a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. Copies of the guide will be sent to all holders of commercial Federal scallop permits. The guide will also be available on the internet at *http://www.nero.noaa.gov*. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

Reporting and Recordkeeping Requirements

This action does not contain an additional collection-of-information requirement subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 11, 2008.

James W. Balsiger,

Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is 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 § 648.80, paragraphs (a)(8)(iv) introductory text, (a)(11)(i)(A), (a)(18)(ii)(A), and (b)(11)(ii)(A) are revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(8) * * *

(iv) Unless otherwise specified within the exempted fisheries authorized under this paragraph (a)(8), incidental catch is restricted, at a minimum, to the following:

* * * * *

(11) * * *

(i) * * *

(A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in this paragraph (a)(11) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

* * * * *

(18) * * *

(ii) * * *

(A) A vessel fishing in the Great South Channel Scallop Dredge Exemption Area specified in this paragraph (a)(18) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

* * * * *

(b) * * *

(11) * * *

(ii) * * *

(A) A vessel fishing in the SNE Scallop Dredge Exemption Area may not fish for, posses on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

* * * * *

[FR Doc. E8–13492 Filed 6–13–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071030625–7696–02]

RIN 0648–XI40

Fisheries of the Northeastern United States; Scup Fishery; Commercial Quota Harvested for 2008 Summer Period

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the scup commercial coastwide fishery from Maine through North Carolina for the Summer Period. Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine through North Carolina that this quota has been harvested and to advise Federal vessel permit holders and Federal dealer permit holders that no commercial quota is available for landing scup in these states. Federally permitted commercial vessels may not land scup in these states for the

remainder of the 2008 Summer quota period (through October 31, 2008).

DATES: Effective June 16, 2008, through October 31, 2008.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Management Specialist, (978) 281–9244.

SUPPLEMENTARY INFORMATION: Regulations governing the scup fishery are found at 50 CFR part 648. The regulations at § 648.121 require the Regional Administrator to monitor the commercial scup quota for each quota period and, based upon dealer reports, state data, and other available information, to determine when the commercial quota for a period has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the scup commercial quota has been harvested and no commercial quota is available for landing scup for the remainder of the Summer Period. Based upon recent projections, the Regional Administrator has determined that the Federal commercial quota of 1,437,588 lb (652 mt) for the 2008 Summer Period will be fully harvested by or before October 31, 2008. To maintain the integrity of the 2009 Summer Period quota by avoiding or minimizing quota overages, the commercial scup fishery will close for the remainder of the Summer Period (through October 31, 2008) in Federal waters, effective as of the date specified above (see **DATES**).

Section 648.4(b) provides that Federal scup moratorium permit holders agree, as a condition of the permit, not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for scup is available. Therefore, effective 0001 hours, June 16, 2008, further landings of scup by vessels holding Federal scup moratorium permits are prohibited through October 31, 2008. Effective 0001 hours, June 16, 2008, federally permitted dealers are also advised that they may not purchase scup from federally permitted vessels that land in coastal states from Maine through North Carolina for the remainder of the Summer Period (through October 31, 2008). The Winter II Period for commercial scup harvest will open on November 1, 2008.

Classification

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

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

Dated: June 10, 2008.

Emily H. Menashes,

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

[FR Doc. 08–1357 Filed 6–11–08; 3:23 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

RIN 0648–AW37

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands King and Tanner Crabs

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

ACTION: Final rule; agency decision.

SUMMARY: NMFS announces the approval of Amendment 24 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). Amendment 24 specifies a five-tier system for determining the status of the crab stocks managed under the FMP, establishes a process for annually assigning each crab stock to a tier and for setting the overfishing and overfished levels, and reduces the number of crab stocks managed under the FMP. Amendment 24 is necessary to establish new overfishing definitions that contain objective and measurable criteria for determining whether each managed stock is overfished or whether overfishing is occurring and to remove from the FMP several crab stocks managed by the State of Alaska. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: This agency decision is effective June 6, 2008.

ADDRESSES: Copies of Amendment 24 and the Environmental Assessment (EA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://www.fakr.noaa.gov/sustainablefisheries.htm*.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any Fishery Management Plan (FMP) amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The North Pacific Fishery Management Council (Council) submitted Amendment 24 to the FMP to NMFS on March 6, 2008. The notice of availability for Amendment 24 was published in the **Federal Register** on March 19, 2008 (73 FR 14766). The public comment period closed on May 19, 2008. NMFS received 1 public comment and considered this comment in determining whether to approve this FMP amendment. NMFS has summarized and responded to the public comment received in this notice under Public Comments, below.

In December 2007, the Council unanimously recommended Amendment 24. Amendment 24 satisfies the Magnuson-Stevens Act requirement that FMPs contain objective and measurable criteria for determining whether a stock is overfished, whether overfishing is occurring, and for rebuilding overfished stocks. Section 301(a) of the Magnuson-Stevens Act establishes national standards for fishery conservation and management, and requires that all FMPs create management measures consistent with those standards. National Standard 1 requires that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from fisheries in federal waters.

The Alaska Fisheries Science Center (AFSC) reviewed the proposed overfishing definitions in Amendment 24 and supporting environmental assessment for compliance with guidelines provided for National Standards 1 and 2 in 50 CFR part 600. During this review, the AFSC recommended modifications to the amendment text to clarify the Council's intent and comply with the Magnuson-Stevens Act. At its February 2008 meeting, the Council adopted the FMP text for Amendment 24 which included the AFSC's recommendations. On February 14, 2008, the AFSC certified that the proposed definitions (1) have sufficient scientific merit, (2) are likely to result in effective Council action to protect a managed stock from closely approaching or reaching an overfished status, (3) provide a basis for objective

measurement of the status of a managed stock against the definition, and (4) are operationally feasible.

Amendment 24 (1) specifies a five-tier system for determining the status of the crab stocks managed under the FMP, (2) establishes a process for annually assigning each crab stock to a tier and for setting the overfishing and overfished levels, and (3) reduces the number of crab stocks managed under the FMP. The stock status determination criteria in Amendment 24 reflect current scientific information and accomplish the following:

- Provide an FMP framework to annually define overfishing values using the best available scientific information;
- Provide a new tier system that accommodates varying levels of uncertainty of information and takes advantage of alternative biological reference points; and
- Define the status determination criteria and their application to the appropriate component of the population.

Five-Tier System

Under Amendment 24, the stock status determination criteria for crab stocks is annually calculated using a five-tier system that accommodates varying levels of uncertainty of information. The five-tier system incorporates new scientific information and provides a mechanism to continually improve the stock status determination criteria as new information becomes available. The five-tier system is used to determine the status of the crab stocks and whether (1) overfishing is occurring or the rate or level of fishing mortality for a stock or stock complex is approaching overfishing, and (2) a stock or stock complex is overfished or a stock or stock complex is approaching an overfished condition.

Overfishing is determined by comparing the overfishing level, as calculated in the five-tier system for the crab fishing year, with the catch estimates for that crab fishing year.

Annually, the overfishing level for each stock is calculated based on the most recent abundance estimates and prior to the State setting the total allowable catch or guideline harvest level for that stock's upcoming crab fishing season. First, a stock is assigned to one of the five tiers based on the availability of information for that stock. Tier assignments are made through the Council's Crab Plan Team process and recommended by the Council's Scientific and Statistical Committee.

Tiers 1 through 4

Once a stock is assigned to a tier, the stock status level is determined based on biomass estimates from recent survey data and simulation models, as available. The tier system specifies three levels of stock status: ''a,'' ''b,'' and ''c.'' At stock status level ''a,'' current stock biomass exceeds the biomass estimated to produce maximum sustainable yield to the fishery (B_{MSY}). At status level ''b,'' current stock biomass is less than necessary to produce B_{MSY}, but greater than a level specified as the critical biomass threshold. At stock status level ''c,'' current stock biomass is below the critical biomass threshold and directed fishing is prohibited. The stock status level determines the equation for calculating the fishing rate (F) used to determine the overfishing level (F_{OFL}). For stocks in Tiers 1 through 4, F is reduced as biomass declines by stock status level.

For Tiers 1 through 3, reliable estimates of biomass, B_{MSY}, and the fishing rate expected to result in maximum sustainable yield to the fishery (F_{MSY}), or their respective proxy values, are available. Tier 4 is for stocks where essential life-history, recruitment information, and understanding are lacking. In Tier 4, a default value of natural mortality rate (M) or an M proxy, and a scalar, gamma (γ), are used in the calculation of the F_{OFL}. Use of the scalar γ is intended to allow adjustments in the overfishing definitions to account for differences in biomass measures. Amendment 24 sets a default value of $\gamma = 1.0$, with the understanding that the Council's Scientific and Statistical Committee may recommend a different value for a specific stock or stock complex as merited by the best available scientific information.

Tier 5

Tier 5 stocks have no reliable estimates of biomass or natural mortality and only historical data of retained catch is available. For stocks in Tier 5, the overfishing level is specified in terms of an average catch value over an historical time period, unless the Scientific and Statistical Committee recommends an alternative value based on the best available scientific information.

After the crab fishing year, NMFS determines whether overfishing occurred by comparing the overfishing level with the catch from the previous crab fishing year. For stocks where non-target fishery removal data are available, catch includes all fishery removals, including retained catch and discard losses. Discard losses will be determined by multiplying the appropriate handling mortality rate by observer estimates of bycatch discards. For stocks where only retained catch information is available, the overfishing level is set for and compared to the retained catch.

An overfished condition is determined by comparing annual biomass estimates to the established minimum stock size threshold (MSST), defined as one half the biomass estimated to produce maximum sustainable yield to the fishery. For stocks where MSSTs (or proxies) are defined, if the biomass drops below the MSST (or proxy thereof) then the stock is considered to be overfished. MSST or proxies are set for stocks in Tiers 1 through 4. For Tier 5 stocks, it is not possible to set an MSST because there are no reliable estimates of biomass.

Annually, the Council, Scientific and Statistical Committee, and Crab Plan Team will review the stock assessment documents, the OFLs and total allowable catches or guideline harvest levels for the upcoming crab fishing year, NMFS's determination of whether overfishing occurred in the previous crab fishing year, and NMFS's determination of whether any stocks are overfished.

Removal of Stocks

Amendment 24 removes 12 state-managed stocks from the FMP. NMFS and the Council found that the State of Alaska (State) has a legitimate interest in the conservation and management of these stocks. As explained in the EA, federal management of these stocks is no longer necessary because under the deferred authority of the FMP, the State has either closed the directed fishery, managed a limited incidental or exploratory fishery, or the majority of catch occurs in state waters. The State will continue to manage these stocks as they currently do under the deferred management authority of the FMP.

An EA was prepared for Amendment 24 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and socio-economic impacts of the alternatives (see **ADDRESSES**).

Public Comments

Comment: Add the following sentence from the draft EA to the Amendment 24 language on Tier 4: ''The value for γ is frameworked, depending on the values of F_{MSY} and it's proxy (F35%) and M.'' Adding this sentence would clarify that the default γ value is a scalar to adjust M to the proxy F_{MSY} and avoid confusion about the role of γ in the

determination of F_{OFL}. The notion that default γ should be set at a value of 1.0 is overly conservative for Bering Sea and Aleutian Islands crab stocks, and simply does not conform to our current understanding of crab population dynamics. NMFS should rely on the simulation modeling estimates of γ generated from the analyses in the EA as best available science and set γ accordingly.

Response: NMFS has determined that Amendment 24 is sufficiently clear regarding specifying a value for γ for Tier 4 stocks and does not agree that Amendment 24 FMP should be changed to include the sentence suggested in the comment. NMFS cannot add language to an FMP amendment submitted by a regional fishery management council. Furthermore, Amendment 24 is consistent with the Magnuson-Stevens Act and other applicable law without this addition.

Amendment 24 provides a default of γ = 1, which applies to all Tier 4 stocks until a stock specific γ can be estimated based on the best available scientific information and reviewed by the Council's Scientific and Statistical Committee. A default γ is necessary until stock specific values can be determined. A γ = 1 allows the F_{MSY} proxy to equal M which is an appropriate default given our current level of scientific information for the group of Tier 4 stocks. In the stock assessment process, a γ can be set more or less conservatively for each stock based on simulation modeling and the best available information during the stock assessment process.

Amendment 24 provides the flexibility to set γ at the appropriate value for each Tier 4 stock based on stock assessments that use the best available information. Stock specific γ values depend on the relationship between fishery selectivities (discard and retained catch) and maturity and growth estimates. The Council's Crab Plan Team discussed ways to estimate γ for each Tier 4 stock, including the methods analyzed in the EA. In May 2008, the Crab Plan Team recommended that assessment authors analyze alternative γ values for each Tier 4 stock to assist in determining the appropriate value for that stock. Using the method analyzed in the EA may not be appropriate for a particular stock if fishery selectivities, maturity, growth, and discards relative to retained catch are not the same as the proxy stock. For example, it may be appropriate to use F35% estimated for Bristol Bay red king crab to estimate γ for a stock like Pribilof red king crab; however, it may not be appropriate to use that same value for blue king crab.

Dated: June 6, 2008.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E8–13529 Filed 6–13–08; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 116
Monday, June 16, 2008

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

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 5

[Docket No. DHS–2007–0057]

Privacy Act of 1974: Implementation of Exemptions; US–VISIT Technical Reconciliation Analysis Classification System (TRACS)

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is concurrently establishing a new system of records pursuant to the Privacy Act of 1974 entitled the Technical Reconciliation Analysis Classification System (TRACS). This system of records will serve as an information management tool and be used to perform a range of information management and analytical functions to enhance the integrity of the United States' immigration system by detecting, deterring, and pursuing immigration fraud, and by identifying persons who pose a threat to national security and/or public safety. In this proposed rulemaking, the Department proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before July 16, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2007–0057, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, 601 S. 12th Street, Arlington, VA 22202–4220.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: TRACS System Manager, US–VISIT Program, U.S. Department of Homeland Security, Washington, DC 20528 (202) 298–5200 or by facsimile (202) 298–5201; Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528; telephone 703–235–0780.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS), National Protection and Program Directorate (NPPD), United States—Visitor and Immigrant Status Indicator Technology (US–VISIT) program, is establishing a Privacy Act system of records known as Technical Reconciliation Analysis Classification System (TRACS). This system of records is an information management tool used for management and analysis of US–VISIT records. TRACS will help enhance the integrity of the United States immigration system by detecting, deterring, and pursuing immigration fraud, and by identifying persons who pose a threat to national security and/or public safety. TRACS will consist of paper files and electronic databases.

The Secretary of the Department of Homeland Security has delegated to NPPD and US–VISIT the responsibility for enhancing the security of U.S. citizens and visitors; facilitating safe, efficient, and legitimate travel to the U.S.; promoting border security and the integrity of the immigration system; safeguarding the privacy of visitors to the U.S.

NPPD and US–VISIT have also been delegated authority for assisting in the prevention of immigration identity fraud or theft; and serving law enforcement, border officials, and others who make decisions on immigration matters, including decisions on immigration benefits and status, by identifying aliens seeking permission to enter, entering, visiting, residing in, changing status within, or exiting the U.S.

Finally, NPPD and US–VISIT have been delegated the responsibility for providing technical assistance and analytic services to other DHS functions and components and other to Federal agencies, as well as to State, local, tribal, and foreign governments, including multinational and international organizations, to better protect the Nation's physical and virtual borders.

To discharge the above responsibilities, TRACS will be used to: (1) Identify individuals who have remained in the United States beyond their authorized period of admission (overstays); (2) maintain information on why individuals are promoted to or demoted from the Automated Biometric Identification System (IDENT) list of subjects of interest; (3) provide the means for additional research in regards to individuals whose biometrics are collected by DHS, and subsequently matched to the list of subjects of interest during a routine IDENT query. A query of this nature would take place following a background check or security screening relating to the individual's hiring or retention, performance of a job function, or the issuance of a license or credential, allowing them access to secured facilities to perform mission and non-mission related work. Examples of this include credentialing of Federal, non-Federal, and contractor employees who work within the secured areas of our nation's airports; (4) to further analyze information about individuals who may be identified as a subject of interest following a routine query against IDENT while applying for visas or other benefits on behalf of domestic partners, such as the U.S. Department of State or foreign partners, as is the case with the United Kingdom Border Agency's (UKBA) International Group Visa Services program, which supports the DHS mission; and (5) to provide information in response to queries from law enforcement and intelligence agencies charged with national security, law enforcement, immigration, or other DHS mission-related functions.

Specifically, TRACS will be used for the analysis of overstays, for changes to the IDENT subject of interest lists, law enforcement and intelligence research, and to assist in developing and fostering foreign partnerships that enhance the

goals and mission of US–VISIT, such as the work being done in association with the UKBA's International Group Visa Services project.

To identify possible overstays, US–VISIT reviews and analyzes information in the Arrival and Departure Information System (ADIS), a US–VISIT system used for the storage and use of biographic, biometric indicator, and encounter data on aliens who have applied for entry, entered, or departed the United States. ADIS consolidates information from various systems in order to provide a repository of data held by DHS for pre-entry, entry, status management, and exit tracking of immigrants and non-immigrants. Its primary use is to facilitate the investigation of subjects of interest who may have violated their immigration status by remaining in the United States beyond their authorized stay. To assist in the resolution of overstays, information related to them may be copied to TRACS for review and further analysis against other US–VISIT programs and systems to better determine their status.

Regarding changes to the IDENT Subject of Interest List, in order to maintain the integrity of the immigration and customs programs, DHS maintains records within IDENT to identify individuals who may present a terrorist threat to the United States as well as those individuals who may not be allowed to enter the country because of past violations of immigration or customs law. An individual is either promoted to or demoted from the list of subjects of interest within IDENT. As IDENT is not a case management system, it merely records the change, not the justification for the change. TRACS will have the ability to serve as a case management system and not only use the information regarding the changes to the list of subjects of interest that is recorded in IDENT but also to record and store the actual justification for any change. The user will also have the ability to enter data in pre-determined selectable categories or manually by either free text or by cutting and pasting information retrieved from other systems and placing it into a workspace in TRACS so that analysis can be performed.

For assistance in background checks and security clearance processes for employment at DHS or receipt of a DHS license or credential, applicants may have their information searched against ADIS or IDENT records. Clearance, employment eligibility, or other license or credential applications that have a match against ADIS or IDENT may require additional research regarding the applicant. Such information would be maintained and tracked in TRACS.

Regarding analyzing information on behalf of domestic or foreign partners, US–VISIT will assist its partners in analyzing information held by US–VISIT where such analysis supports the DHS mission. For example, for the UKBA visa services project, US–VISIT will receive biometric information from the UK for UK visa applicants and query their biometric information against the IDENT list of subjects of interest. US–VISIT will then provide the results from the query back to the UK for purposes of visa adjudication.

Regarding law enforcement and intelligence research, US–VISIT may also receive requests from law enforcement agencies, such as Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and the Federal Bureau of Investigation (FBI), as well as from other intelligence agencies, to provide further information regarding the immigration status for individuals of interest to those organizations. US–VISIT tracks these requests and the responses in TRACS.

Information in TRACS comes primarily from ADIS and IDENT. TRACS may also contain information from other DHS component programs or systems, or publicly available source systems that are manually queried while researching a particular case. Data researched or identified through publicly available source systems, such as the internet, will be identified and referenced in the individual's record in TRACS. If it becomes routine for a specific public source system(s) to be used on a regular basis, the PIA will be updated to reflect this system(s) as a common source of information and data. For research conducted, based on an external request, information may also be provided from the requesting entity, as described in the system of records notice.

The data contained in TRACS is primarily from the US–VISIT systems Arrival and Departure Information System (ADIS) (72 FR 47057, Arrival and Departure Information System (ADIS), System of Records Notice, August 22, 2007); the Automated Biometric Identification System (IDENT) (72 FR 31080, Automated Biometric Identification System (IDENT), System of Records Notice, June 5, 2007); and a Customs and Border Protection (CBP) system called the Treasury Enforcement Communications System (TECS) (66 FR 53029, Treasury Enforcement Communication System (TECS), System of Records Notice, October 18, 2001). TRACS also receives data from a Department of State (DOS) system called the Consolidated Consular Database (CCD); the Student and Exchange Visitor Information System (SEVIS) (70 FR 14477, Student and Exchange Visitor Information System (SEVIS), System of Records Notice, March 22, 2005); the Central Index System (CIS) (72 FR 1755, Central Index System (CIS), System of Records Notice, January 16, 2007); the Computer-linked Application Information Management System (CLAIMS 3 and 4) (64 FR 18052, Computer Linked Application Information Management System (CLAIMS 3 and 4), System of Records Notice, April 13, 1999); the Refugees, Asylum & Parole System (RAPS); the Deportable Alien Control System (DACS) (67 FR 64136, Deportable Alien Control System (DACS), System of Records Notice, October 17, 2002); and the Enforcement Case Tracking System (ENFORCE). TRACS also contains data from web searches for addresses and phone numbers.

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed an issue a Final Rule.

In this notice of proposed rulemaking, DHS is now proposing to exempt TRACS, in part, from certain provisions of the Privacy Act. Some information in TRACS relates to official DHS national security, law enforcement, immigration, intelligence, and preparedness and critical infrastructure protection activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and of immigration and border management and law enforcement personnel; to ensure DHS's ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

An individual who is the subject of a record in this system may access or correction of those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received. DHS will review

and comply appropriately with information requests on a case by case basis. An individual desiring copies of records maintained in this system should direct his or her request to the FOIA Officer (*HTTP://WWW.DHS.GOV/FOIA,* under ''contacts''. See also the system of records notice also in today's **Federal Register**). Requests for correction of records in this system may be made through the Traveler Redress Inquiry Program (TRIP) at *http://www.dhs.gov/trip* or via mail, facsimile or e-mail in accordance with instructions available at *http://www.dhs.gov/trip*.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review'' (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action 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, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 5

Privacy; Freedom of information.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.;* 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. At the end of appendix C to part 5, Exemption of Record Systems Under the Privacy Act, add the following new section 6 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

6. The Department of Homeland Security Technical Reconciliation Analysis Classification System (TRACS) consists of a stand alone database and paper files that will be used by DHS and its components. This system of records will be used to perform a range of information management and analytic functions involving collecting, verifying, and resolution tracking of data primarily on individuals who are not United States citizens or legal permanent residents (LPRs). However, it will contain data on: (1) U.S. citizens or LPRs who have a connection to the DHS mission (e.g., individuals who have submitted a visa application to the UK, or have made requests for a license or credential as part of a background check or security screening in connection with their hiring or retention, performance of a job function or the issuance a license or credential for employment at DHS); (2) U.S. citizens and LPRs who have an incidental connection to the DHS mission (e.g., individuals living at the same address as individuals who have remained in this country beyond their authorized stays); and (3) individuals who have, over time, changed their status and became U.S. citizens or LPRs. TRACS is managed and maintained by the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program. The data contained in TRACS is primarily derived from the Arrival and Departure Information System (ADIS) (72 FR 47057, Arrival and Departure Information System (ADIS), System of Records Notice, August 22, 2007); the Automated Biometric Identification System (IDENT) (72 FR 31080, Automated Biometric Identification System (IDENT), System of Records Notice, June 5, 2007); and a Customs and Border Protection (CBP) system called the Treasury Enforcement Communications System (TECS) (66 FR 53029, Treasury Enforcement Communication System (TECS), System of Records Notice, October 18, 2001). TRACS also receives data from a Department of State (DOS) system called the Consolidated Consular Database (CCD); the Student and Exchange Visitor Information System (SEVIS) (70 FR 14477, Student and Exchange Visitor Information System (SEVIS), System of Records Notice, March 22, 2005); the Central Index System (CIS) (72 FR 1755, Central Index System (CIS), System of Records Notice, January 16, 2007); the Computer-linked Application Information Management System (CLAIMS 3 and 4) (64 FR 18052, Computer Linked Application Information Management System (CLAIMS 3 and 4), System of Records Notice, April 13, 1999); the Refugees, Asylum & Parole System (RAPS); the Deportable Alien Control System (DACS) (67 FR 64136, Deportable Alien Control System (DACS), System of Records

Notice, October 17, 2002); and the Enforcement Case Tracking System (ENFORCE). TRACS also contains data from web searches for addresses and phone numbers. This data is collected by, on behalf of, in support of, or in cooperation with DHS and its components. The Secretary of Homeland Security has exempted this system from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f); and (g) pursuant to 5 U.S.C. 552a(j)(2). In addition, the Secretary of Homeland Security has exempted this system from 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), (k)(2), and (k)(5). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation; and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (e)(4)(H) (Agency Requirements) because portions of this system are exempt from the individual access provisions of subsection (d) which exempts providing access because it could alert a subject to the nature or existence of an investigation, and thus there could be no procedures for that particular data. Procedures do exist for access for those portions of the system that are not exempted.

(g) From subsection (e)(4)(I) (Agency Requirements) because providing such source information would impede law enforcement or intelligence by compromising the nature or existence of a confidential investigation.

(h) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(i) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(j) From subsection (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(k) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–13386 Filed 6–13–08; 8:45 am]

BILLING CODE 4410–10–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC42

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Mission-Related Investments, Rural Community Investments

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) proposes a new rule that would authorize each Farm Credit System (Farm Credit, System, or FCS) bank, association, and service corporation (institution) to invest in rural communities across America under certain conditions. The proposed rule would allow each System institution to make investments in rural communities that are outside of an urbanized area only for specific purposes. Several provisions in the proposed rule would ensure that System investments in rural America are safe and sound and comply with the Farm Credit Act of 1971, as amended (Act), and other applicable statutes.

DATES: Comments should be received on or before August 15, 2008.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site or the Federal eRulemaking Portal. As faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, please consider another means to submit your comment if possible. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov*.
- *FCA Web Site: http://www.fca.gov*. Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.
- *Fax:* (703) 883–4477. Posting and processing of faxes may be delayed. Please consider another means to comment, if possible.

You may review copies of comments we receive at our office in McLean,

Virginia, or from our Web site at *http://www.fca.gov*. Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

The FCA proposes a new rule, § 615.5176, which would enable System institutions to more effectively serve the needs of rural communities by exercising investment powers under the Act. The proposed rule focuses on specific needs in rural communities. Essentially, the proposed rule would authorize two separate types of investments that System institutions could make in America's rural communities. First, System institutions could invest in debt securities that would involve projects or programs that benefit the public in rural communities. Equity investments in venture capital funds are the second type of investment that the proposed rule would authorize. Venture capital funds create new economic opportunities and jobs in rural communities by providing capital to small or start-up businesses.

The proposed rule would authorize each System institution to make investments in rural areas that according to the terms of the latest United States decennial census have fewer than 50,000 residents and are outside of an urbanized area. The proposed rule would allow System institutions to invest in: (1) Essential community facilities; (2) basic transportation infrastructure; (3) rural communities recovering from disasters; (4) debt securities for rural development projects that the United States, its agencies, any state, Puerto Rico, or a local municipal government sponsors or guarantees; (5) debt securities that support the rural development activities of non-System financial institutions; (6) rural business investment companies; and (7) venture capital funds that invest in rural businesses that create jobs and economic growth under specific conditions. The proposed rule also would allow System institutions to make other investments that are not expressly covered by this regulation with FCA approval. Under the proposed rule, an institution may hold rural community investments in an amount that does not exceed 150 percent of its total surplus. As discussed in greater detail below, other provisions of the proposed rule address safety and soundness and compliance with the Act.

A. The Statutory Basis for the Proposed Rule

System institutions derive their investment authorities from several provisions of the Act. Sections 1.5(15) and 3.1(13)(A) of the Act [1] authorize System banks to invest in securities of the United States and its agencies, and make ''other investments as may be authorized under regulations issued by the Farm Credit Administration.'' Sections 2.2(10) and 2.12(18) of the Act [2] authorize System associations to invest their funds as approved by their district banks in accordance with FCA regulations. A System service corporation is authorized by section 4.25 of the Act [3] to engage in investment activities to the same extent as its System parents.[4]

Investments in rural communities are compatible with the System's statutory mandate. The preamble to the Act clearly states that Congress enacted the law ''to provide for an adequate and flexible flow of money into rural areas, and to modernize * * * existing farm credit law to meet current and future rural credit needs, and for other purposes.'' The preamble and investment provisions of the Act form a broad statutory framework that confers considerable discretion on the FCA to decide the purposes, conditions, and limits for all investment activities at System institutions. In exercising this discretion, the FCA has authorized System institutions to invest their funds in obligations that are suitable for liquidity, risk management, and activities that are closely related to the System's statutory mandate.

In implementing the investment provisions of the Act, the FCA has taken a cautious and incremental approach in approving System investments for mission-related purposes. Since Congress enacted the Act in 1971, the FCA has approved new regulations and programs that authorize the System to make specified investments in agriculture and rural communities, subject to certain conditions and limits. The factors that the FCA considers whenever it decides to approve new mission-related investments are: (1) The financial needs of agriculture and rural communities; (2) new investment products offered in the marketplace; (3) the System's status as a Government-sponsored enterprise (GSE); and (4) compliance with the Act and other applicable statutes. Under FCA regulations and programs, System investments in agriculture and rural communities have remained small because lending to farmers, ranchers, cooperatives, and other eligible borrowers is the primary activity of System institutions under the Act. Additionally, most mission-related investments that the FCA has approved are related to the System's expertise in financing agriculture, rural housing, and infrastructure in rural areas.

Historically, the FCA has authorized System institutions to invest in debt securities, but not in equity securities of non-System entities. In 2002, Congress granted System institutions express authority to invest in rural business investment companies (RBICs), which are venture capital funds that the United States Department of Agriculture (USDA) funds and oversees. The FCA believes that allowing the System to invest in venture capital funds that hold small equity positions in start-up rural enterprises is consistent with congressional intent. As discussed in greater detail below, the proposed rule would implement the provisions of title VI of the Farm Security and Rural Investment Act of the 2002 [5] and the Act by allowing System institutions to invest in RBICs and other venture

[1] 12 U.S.C. 2013 (15) and 2122 (13)(A).

[2] 12 U.S.C. 2073 (10) and 2093 (18).

[3] 12 U.S.C. 2211. Section 4.25 authorizes System banks to organize service corporations. Section 4.28A of the Act, 12 U.S.C. 2214a, confers this authority on System associations.

[4] Section 4.25 of the Act prohibits service corporations from extending credit or providing insurance services to System borrowers. Otherwise, the Act authorizes service corporations to perform any other function or service that its FCS parents may perform. Service corporations currently have authority to purchase and hold other investments under FCA regulations in subpart E of part 615.

[5] Pub. L. No. 107–171, § 384J, 116 Stat. 134, 397 (May 13, 2002).

capital funds that provide start-up money to rural entrepreneurs.

In accordance with the Act, the FCA has enacted several regulations since 1971 that authorize System investments in agriculture and America's rural communities. The first mission-related investments that the FCA approved were farmers' notes.[6] Since 1972, FCA regulations have authorized System banks and associations to invest in obligations of States, municipalities, and local governments. In 1993, a new regulation authorized System institutions to purchase and hold mortgage securities issued or guaranteed by the Federal Agricultural Mortgage Corporation (Farmer Mac). In 1999, the FCA amended another regulation to permit investment in asset securities backed by agricultural equipment. An existing regulation, § 615.5140(e), allows Farm Credit institutions to hold other investments that the FCA approves on a case-by-case basis. This regulatory framework guides investment practices at Farm Credit institutions and ensures that System investments comply with law and are safe and sound.

Since 2005, the FCA has approved requests by System banks and associations, on a case-by-case basis, to initiate pilot programs for investing in America's rural communities under specified conditions. Under these FCA-approved pilot programs, System institutions acquired expertise and became active in making investments that provided funding for essential projects in rural communities.

Based on the positive experience of these pilot programs, the FCA is proposing a rule that will allow all System banks, associations, and service corporations to make certain investments in rural communities under prescribed conditions without prior FCA approval. This proposed rule would permit the rural-based System to use its expertise and a portion of its financial resources to support rural economic growth and development by investing in those projects and programs in America's rural communities that often have difficulty attracting financing at affordable rates.

The proposed rule implements the investment provisions of the Act by ensuring that: (1) System institutions invest in rural communities only for specific purposes; and (2) all instruments purchased and held by Farm Credit institutions are investment securities in accordance with market practices and securities laws. Investments in rural communities also would be subject to a portfolio limit and other controls to ensure that FCS rural community investment activities comply with the Act and are safe and sound.

The FCA emphasizes that lending to farmers, ranchers, aquatic producers and harvesters, farm-related businesses, rural homeowners, cooperatives, and rural utilities remains the primary purpose of the System. However, within the parameters prescribed by the proposed rule, System investments, which help strengthen the economic viability of rural communities, are compatible with the preamble and several provisions of the Act. Investing in rural communities enables Farm Credit to fulfill its mission by helping sustain rural communities on which the System's borrowers and owners are dependent for their livelihoods.

B. Why Investments in Rural Communities Are Important

The FCA proposes this rule to allow the System to make investments in rural communities and to support and supplement investments by government, commercial banks, investment banks, and venture capital funds. The FCA believes that this new rule will enable the System to more fully assist rural communities in financing projects that are designed to provide essential facilities, infrastructure, and services to residents. As discussed in greater detail below, System institutions made investments under FCA authorized pilot programs, which demonstrated that the FCS is both locally and regionally positioned to effectively participate and assist rural development networks that strive to address rural needs. The proposed rule is designed to enable FCS institutions to collaborate and partner in rural development initiatives that advance the System's mission and its capacity to serve as a financial intermediary promoting the flow of money into rural areas.

Many rural communities are struggling to retain economic viability and vitality that can provide economic opportunities and a better quality of life for their residents. Rural communities face numerous demographic, social, and economic challenges in meeting the needs of their residents. As a result, rural communities often find it difficult to provide the essential facilities, infrastructure, and services that their residents need. For example, an aging population in rural areas requires medical and assisted health care facilities. However, rural communities often have fewer health care providers and facilities to meet the increasing medical needs of its growing elderly population.[7]

Also, a large gap persists between rural and metropolitan residents who have earned college degrees. This gap is reinforced by a lower demand for workers with post-secondary degrees in rural areas, which in turn, contributes to the out-migration of skilled workers.[8] These factors place rural communities at a disadvantage in attracting businesses that offer higher wages and better job benefits to employees. Essential facilities, infrastructure, and services in rural areas often lag behind those in metropolitan areas. This is another factor that limits the ability of rural communities to attract and retain businesses that provide employment and economic opportunities. These obstacles to rural economic development and revitalization are further compounded by funding challenges for projects that are designed to assist rural communities in resolving these problems.

Funding for economic growth and development projects in rural communities is available from a variety of sources, most notably the Federal and State governments, and private-sector financiers, including commercial and investment banks. Each of these entities faces challenges in providing rural communities with the funding needed for these projects. Efforts by Federal or State governments to help rural communities are often curtailed by budget constraints. Also, many rural community banks are willing to provide short-term funding, but find it difficult to provide the additional long-term capital investment needed for facilities in rural areas.[9] Essential facilities and large capital improvements, such as critical care access hospitals, require a large capital investment that is repaid over an extended period of time. In many cases, no single investor is willing and able to supply all of the capital necessary for such projects, and rural

[6] The farmers' note program authorizes production credit associations and agricultural credit associations to invest in notes, contracts, and other obligations farmers and ranchers enter into with cooperatives and dealers that sell farm equipment, inputs, and supplies. Farmers' notes are investments that provide liquidity to small rural agribusinesses.

[7] Carol A. Jones, *et al.*, ''Population Dynamics Are Changing the Profile of Rural Areas,'' *Amber Waves*, Economic Research Service, United States Department of Agriculture, April 2007, p. 5.

[8] ''Rural Education At A Glance,'' *Rural Development Research Report Number 98*, Economic Research Service, United States Department of Agriculture, November 2003, p. 4.

[9] Walter Gregg, *The Availability and Use of Capital by Critical Access Hospitals*, Flex Monitoring Team Briefing Paper No. 4, Flex Monitoring Team—University of Minnesota, University of North Carolina at Chapel Hill, and the University of Southern Maine, March 2005, p. 10.

communities must depend on a combination of government and private-sector financial sources and local donations.[10] Another obstacle is that rural development projects in remote rural locations typically involve higher costs and greater risks, which deter investors. For these reasons, government and private-sector financial resources often are insufficient to fully fund many necessary and worthwhile projects that rural residents need.

System institutions are an integral part of rural America. The farmers and ranchers who borrow from and own the FCS live and work in rural communities. These System stockholders and their families depend on local rural communities for essential services, employment, and other economic opportunities. Today, the majority of farm household income is derived from off-farm sources.[11] As a result, farm families depend on local rural communities for employment that supplements farm income. Further, agricultural production is one of the most hazardous industrial sectors.[12] Farmers and ranchers confront the same problems as other residents of America's rural communities in obtaining access to quality hospitals, medical facilities, schools and essential services.

System institutions are active in financial markets that serve regional and local rural areas across the United States. For this reason, the System is familiar with the challenges that rural communities face in meeting the needs of both farm and nonfarm rural residents. The System has the financial capacity to invest in rural development, and this proposed rule would advance the System's contributions to rural development efforts.

C. Investments in Rural Communities Made Under Pilot Programs

Over the past 3 years, a number of System institutions have developed programs to make investments in rural communities through FCA-approved pilot programs. As a result of the investments made under these pilot programs, rural communities were able to address specific regional needs because these investments provided greater access to capital for community facilities, revitalization projects, and other economic development initiatives. These investments also provided additional liquidity into rural financial markets. In several cases, these investments helped provide capital at more affordable terms and rates, which in turn made these projects more feasible.

The pilot programs have demonstrated that Farm Credit institutions have the capacity and willingness to work collaboratively with rural communities and financial institutions to address local and regional rural economic development needs. As previously discussed, many rural development projects are reliant on multiple partners for success. In making rural community investments under the pilot programs, System institutions partnered with: Federal, State, and regional rural development authorities; non-System financial institutions including rural community banks; nonprofit organizations; and venture capital funds. For example, System investments under the pilot programs have provided capital for rural hospitals designated as critical access facilities, which were sponsored, in part, by the USDA's Rural Development Community Facilities Program. Other examples of specific System investments that have made a positive difference in rural communities include investments in: Medical and mental clinics; treatment facilities for adolescents and adults; living and nursing centers for the elderly; schools; and community facilities. Several projects, which were sponsored by regional or State development authorities, modernized obsolete facilities for value-added agricultural products, or created new facilities to promote local economic growth. These projects were designed to promote economic growth in rural areas by attracting and promoting businesses that create or retain jobs in these rural communities.

Non-System financial institutions and venture capital funds have also benefited from investments that System institutions made under the pilot programs. For example, System institutions have helped to increase liquidity at several rural community banks by buying bonds that support the rural development efforts of these banks. These investments enabled these banks to reduce the long-term financing costs for specific rural development projects. Additionally, investments in regional investment networks provided venture capital to rural entrepreneurs for start-up businesses that contributed to the vitality of rural communities. System institutions were prudent in undertaking investment activities in rural communities and assumed reasonable risks within pilot program conditions.

In addition to the pilot programs, grant programs and charitable contributions at many System institutions complement their commitments to the citizens of local rural communities. Although the proposed rule does not specifically address grants, System institutions have authority under the incidental power provisions of the Act to make charitable grants and donations.[13] The FCA continues to encourage FCS institutions to consider making charitable donations and contributions to worthwhile causes in the communities they serve. System institutions have contributed to a wide variety of community organizations and entities, including emergency and medical services, agricultural and rural community development educational programs, and value-added agricultural product initiatives. Charitable grants by System institutions complement rural community investment programs and are an additional way for Farm Credit institutions to further the System's mission and help enhance the quality of life for residents in rural communities.

II. Section-by-Section Analysis

A. Rural Communities

Proposed § 615.5176(a) would authorize Farm Credit banks, associations, and service corporations to make rural community investments. Proposed § 615.5176(a) also provides that FCS institutions may make these investments only in areas *outside* of an ''urbanized area'' [14] as defined by the latest decennial census of the United States. For the purposes of this proposed rule, areas outside of an urbanized area are ''rural.'' The proposed rule would authorize the FCS to make rural community investments in areas that the United States Census Bureau determined in the latest decennial census to have a population of less than 50,000 residents. For the purposes under this proposed rule, the geographic area includes any State within the United States and the Commonwealth of Puerto Rico.

The FCA considered numerous definitions of ''rural,'' recognizing there is no single, universally preferred

[10] Ibid., p. 25 and 26.

[11] Ted Covey, *et al.*, ''Agricultural Income and Finance Outlook,'' *Outlook*, AIS–85, Economic Research Service, United States Department of Agriculture, December 2007, p. 49.

[12] ''Chapter 3-Focus on Agriculture,'' *Worker Health Chartbook 2004*, National Institute for Occupational Safety and Health, NIOSH Publication No. 2004–146, p. 1.

[13] Sections 1.5 (21), 2.2 (20), 2.12 (20) and 3.1 (16) of the Farm Credit Act (12 U.S.C. 2013 (21), 2073 (20), 2093 (20), 2122 (16)).

[14] The United States Census Bureau defines an urbanized area as an urban area of 50,000 or more people that have core census block groups or blocks that have a population density of at least 1,000 people per square mile and surrounding census blocks that have an overall density of at least 500 people per square mile.

definition of ''rural'' that policymakers commonly use.[15] In fact, more than 15 definitions of ''rural'' are currently used by different Federal agencies for various programs.[16] In developing the proposed rule, the FCA relied on Census Bureau terminology to ensure that the geographic areas in which investments are permitted are readily identifiable and easily distinguished.

In determining which geographic areas should qualify under the proposed rule, the FCA seeks to include those areas with sufficient population densities to support health care and other essential facilities serving rural residents, while prohibiting investments in urbanized areas. For example, hospitals and other health care facilities that primarily serve rural geographic areas are typically located in areas that have less than 50,000 residents. Also, whenever Congress has expressly authorized FCS institutions to lend or invest in rural development projects, it has allowed these activities in communities with populations of 50,000 or fewer residents.[17] Additionally, most Federal agencies and demographic experts have determined that densely populated areas with 50,000 or more inhabitants are urbanized areas. For this reason, investments authorized under the proposed rule would allow System institutions to invest in areas with populations of less than 50,000 residents based on the latest decennial census of the United States.

By allowing the System to invest in rural communities that have fewer than 50,000 residents, the proposed rule provides ''an adequate and flexible flow of funds into rural areas'' in accordance with the Act, while precluding System institutions from investing in urbanized areas. Information is publicly available on the Census Bureau's Web site, including census population statistics and maps. As a result, System institutions and other interested parties are able to determine if a particular location is within a ''rural'' community for the purposes of § 615.5176(a).

B. Debt Securities

Proposed § 615.5176(b) would authorize System institutions to invest in rural communities by purchasing and holding debt securities for purposes specified in § 615.5176(b)(1) through (5). The proposed rule defines debt securities as obligations that are commonly recognized in capital markets as a medium for investment, including government obligations, corporate bonds, revenue bonds, asset-backed securities and mortgage securities. Proposed § 615.5176(b) expressly excludes commercial loans and instruments or transactions that are more similar to commercial loans than to traditional investment instruments in order to clarify the statutory distinction between loans and investments. Under the proposed rule, System institutions could not use their authority to invest in rural communities to make loans to otherwise ineligible borrowers.

1. Essential Community Facilities

Proposed § 615.5176(b)(1) would authorize System institutions to invest in debt securities that finance essential community facilities, such as hospitals, health care facilities, emergency services, and schools. Many essential community facilities are owned and operated by State, local, or municipal governments. In other cases, quasi-governmental or highly regulated private and nonprofit entities own and operate essential community facilities. Government obligations and revenue bonds often fund the construction and renovation of these facilities. Rural communities are currently facing increasing difficulty in funding these facilities because of deteriorating liquidity in financial markets. System institutions can help alleviate this problem by purchasing and holding debt securities as investments in community facilities that provide essential services to rural residents.

2. Basic Transportation Infrastructure

Financing basic transportation infrastructure, such as roads, bridges, and other public transportation systems, is another authorized investment purpose under the proposed rule. The public sector owns, maintains, and operates most basic transportation infrastructure in the United States. Most rural transportation facilities are operated by public agencies or nonprofit groups, with a small percentage operated by private entities. Transportation projects are another area where the System could significantly help rural communities build and improve infrastructure, which would strengthen their economic viability. Rural communities and particularly agricultural industries, depend on quality transportation systems, which are critical in supplying inputs, shipping and distributing outputs and products, and supporting economic development. Proposed § 615.5176(b)(2) would authorize System institutions to purchase government obligations, revenue bonds, and other debt obligations that support basic transportation infrastructure.

3. Revitalization of Rural Communities After a Disaster

Proposed § 615.5176(b)(3) would permit System institutions to purchase debt securities in revitalization projects that help rebuild rural areas devastated by disasters where an emergency has been declared pursuant to law. These investments must support local efforts and residents by contributing to the economic recovery of the affected rural community.

4. Rural Development Projects With Government Sponsorship or Guarantees

Under proposed § 615.5176(b)(4), System institutions could invest in debt securities that a government issues, sponsors, or guarantees under programs to fund rural community development projects. Without crucial financial support from Federal, State, or local governments, rural communities would face greater difficulty in funding vital development projects. By investing in debt securities for rural economic development under government programs, the System assists rural communities across America in accordance with its statutory mandate. By proposing § 615.5176(b)(4), the FCA is encouraging System institutions to work with Federal, State, and local governments and their partners to invest in projects that bring jobs, infrastructure, community facilities, and vital services to rural areas and their residents.

Proposed § 615.5176(b)(4)(i) covers debt securities that the United States and its agencies issue, sponsor, or guarantee under programs that have the specific purpose of directly financing economic development in rural communities. The FCA emphasizes that the proposed rule does not require the full faith and credit of the United States for bonds issued or guaranteed by agencies of the United States. However, these investments are authorized only if the Federal agency issues or guarantees these bonds or obligations in accordance with a program that has the specific purpose of promoting economic development in rural areas. For

[15] Andrew F. Coburn *et al.*, ''Choosing Rural Definitions: Implications for Health Policy,'' Rural Policy Research Institute Health Panel, March 2007, p. 1.

[16] Ibid.

[17] According to section 3.7(f) of the Act, 12 U.S.C. 2128(f), banks for cooperatives and agricultural credit banks may extend credit to water and waste disposal facilities in communities where the population does not exceed 20,000 inhabitants based on the latest decennial census of the United States. A provision of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 2009cc, *et seq.*, authorizes System institutions to establish and invest in rural business investment companies in communities in non-metropolitan counties that have populations of 50,000 or less inhabitants under the last decennial census of the Unites States.

example, the Tennessee Valley Authority, the Small Business Administration, and various agencies in the USDA and the Department of Housing and Urban Development issue and guarantee bonds under specific programs for infrastructure, facilities, and other development projects in rural areas, and System investment in these obligations would be authorized by the proposed rule.

Other Federal agencies operate programs in both metropolitan and rural areas which are not part of any specific rural development mission. Bonds and other obligations issued or guaranteed under such programs would not qualify as investments under the proposed rule. For example, the proposed rule would not authorize the FCS to invest in mortgage securities issued or guaranteed by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation because the purpose of these securities is to enhance the liquidity of residential home loans throughout the United States, rather than to promote rural development. Another regulation, § 615.5140, permits System institutions to make investments for liquidity and risk-management purposes in bonds and obligations, including residential mortgage securities, that Federal agencies issue or guarantee under programs that are unrelated to rural development. The proposed rule focuses on investments in rural communities and would not authorize System institutions to hold residential mortgage securities issued by other GSEs, but the FCA continues to study this issue.

Proposed § 615.5176(b)(4)(ii) would allow System institutions to invest in debt securities that any State, the Commonwealth of Puerto Rico, a local or municipal government, or other political subdivision of a State, issues, sponsors, or guarantees that are specifically related to development in rural communities. Many local or municipal governments and other political subdivisions, such as special districts, often sponsor particular rural development projects by providing tax incentives or other benefits to private-sector obligors who issue revenue bonds. These revenue bonds, which help finance rural development projects, would qualify as investments that FCS institutions could purchase and hold under proposed § 615.5176(b)(4)(ii). This provision would also allow System institutions to invest in mortgage securities that are issued or guaranteed by State or local agencies that specialize in rural development.

5. Rural Development Projects Financed by Non-System Financial Institutions

Proposed § 615.5176(b)(5) would allow System institutions to invest in debt securities issued by non-System financial institutions. The proposed rule would authorize System institutions to purchase these debt securities to increase financial assistance to rural communities and improve the liquidity of rural financial markets. This provision would enhance cooperation between System and non-System financial institutions and ultimately benefit rural communities. System institutions may purchase asset-backed securities, covered bonds, or similar types of bonds issued by non-System financial institutions directly or through trusts that supply funds to non-System financial institutions for rural development. Investments made under the pilot programs evidence that securities, including commercial bank bonds issued by rural community banks and purchased by System institutions, can effectively increase bank liquidity. These investments benefit rural communities and residents, while establishing partnerships between non-System and System institutions.

C. Equity Investments

Equity investments in venture capital funds are another type of investment that the proposed rule would authorize FCS institutions to purchase and hold. Under this provision of the proposed rule, System institutions could invest in venture capital funds that provide capital to start-up and small private-sector enterprises that bring jobs and economic opportunities to rural communities. Venture capital funds that operate in the United States invest only 1.6 percent of their funds in rural community enterprises, although these enterprises represent 19.2 percent of all businesses.[18] System institutions could make a small, but meaningful, contribution to rural economic development by investing in venture capital funds that provide capital into rural enterprises. As discussed in greater detail below, System institutions would hold only small, passive investment positions in venture capital funds because of statutory and regulatory restrictions.

Proposed § 615.5176(c) would authorize System institutions to make equity investments in two types of entities, RBICs and venture capital funds, for the purpose of providing equity capital to rural business enterprises. Rural entrepreneurs often lack sufficient equity capital to establish and expand businesses that are the mainstay of prosperous rural economies. Venture capital funds provide equity capital in rural business enterprises, which promote economic development and job opportunities in rural communities.

1. Rural Business Investment Companies

Proposed § 615.5176(c)(1) would authorize System institutions to purchase and hold equity investments in RBICs that are established and operate in accordance with 7 U.S.C. 2009cc *et seq.* As discussed earlier, the Farm Security and Rural Investment Act of 2002 created the Rural Business Investment Program and expressly authorized any Farm Credit System institution to establish and invest in RBICs. Congress intended to promote economic development, create wealth, and expand job opportunities in rural areas through RBIC equity investments. The System's statutory authority to establish and invest in RBICs is incorporated into proposed § 615.5176(c)(1). The proposed rule would enable System institutions to invest in RBICs to the fullest extent allowed by 7 U.S.C. 2009cc *et seq.* The FCA emphasizes that proposed § 615.5176(c)(1) would authorize System institutions to invest in both leveraged and non-leveraged RBICs.

2. Venture Capital Funds

Proposed § 615.5176(c)(2) would authorize System institutions to invest in venture capital funds which, in turn, invest in rural businesses that provide job opportunities. Under this provision, System institutions would be able to indirectly provide rural entrepreneurs needed equity capital through venture capital funds, such as regional investor networks, which have investment objectives similar to RBICs.

The Center for the Study of Rural America of the Federal Reserve Bank of Kansas identified a significant need for equity capital for rural entrepreneurs because entrepreneurial activity is strongly linked to economic growth.[19] For this reason, experts conclude that additional focus on rural entrepreneurship can be an effective strategy in combating the decline of traditional resource-based businesses in

[18] Kendall McDaniel, ''Venturing into Rural America,'' *The Main Street Economist,* Center for the Study of Rural America—Federal Reserve Bank of Kansas City, p. 2.

[19] Mark Drabenstott, *et al.*, ''Main Streets of Tomorrow: Growing and Financing Rural Entrepreneurs—A Conference Summary,'' *Economic Review, Third Quarter 2003*, Federal Reserve Bank of Kansas City, pp. 73 and 74.

rural areas.[20] However, rural economies have difficulty attracting venture capital because metropolitan areas usually offer better profits. Policy officials and experts agree that entrepreneurship in remote and sparsely populated rural areas can be challenging because access to skilled labor, technology, and capital is more limited. Investments in venture capital funds that focus on rural entrepreneurs can effectively begin to overcome these barriers to rural businesses.

Proposed § 615.5176(c)(2) would place specific restrictions on System investment in venture capital funds to ensure that these investments remain small and passive. Additionally, these controls would minimize potential financial risk to the System institutions, while providing the System with flexibility to invest in rural development under the Act.

Proposed § 615.5176(c)(2)(i) would control financial risk by prohibiting any System institution from investing more than 5 percent of its total surplus in venture capital funds and more than 2 percent of its total surplus in any one venture capital fund. The FCA emphasizes that this limit on venture capital funds in proposed § 615.5176(c)(2)(i) is in addition to the overall limit in proposed § 615.5176(e)(i), which prevents total rural community investments at any FCS institution from exceeding 150 percent of its total surplus.

The restrictions in proposed § 615.5176(c)(2)(ii) and (iii) would prevent System institutions from controlling and managing venture capital funds. Proposed § 615.5176(c)(2)(ii) would prohibit any FCS institution from holding more than 20 percent of the voting equity of any venture capital fund. The purpose of this provision is to allow System institutions to invest in venture capital funds that focus on rural areas, while imposing a reasonable limit that prevents any System institution from gaining a controlling interest in any fund. Proposed § 615.5176(c)(2)(iii) would prohibit any FCS institution from participating in the routine management or operation of a venture capital fund.

Finally, proposed § 615.5176(c)(2)(iv) and (v) would establish controls to avoid potential conflicts of interest. Proposed § 615.5176(c)(2)(iv) would prohibit any director, officer, or employee of a System institution from serving as a director, officer, employee, principal shareholder, or trustee of any venture capital fund or of any entity funded by, or affiliated with, the venture capital fund. Proposed § 615.5176(c)(2)(v) would prohibit any System institution from participating in any decision or action of a venture capital fund involving or affecting any customer of the institution. Although proposed § 615.5176(c)(2)(v) would permit a System institution to invest in venture capital funds that hold equity in one of its borrowers, the institution could not participate in decisions or actions that affect such customers. Additionally, the proposed rule does not prohibit System institution directors, officers, or employees from serving in an investment screening or other advisory capacity to a venture capital fund, subject to the restrictions discussed above. System institution representatives serving in an advisory capacity to a venture capital fund also remain subject to FCA conflict of interest regulations and institution policies.

D. Other Investments Approved by the Farm Credit Administration

The FCA's experience with the pilot programs reveals that the types of System investments may change as the needs of rural communities evolve. For this reason, the FCA believes that the new regulation should contain a mechanism for approving investments that currently do not exist, but may emerge in the future. Currently, § 615.5140(e) provides the FCA with the authority to approve new investments that are not specifically authorized by regulation.

Proposed § 615.5176(d) establishes specific criteria for System institutions to apply to the FCA for permission to hold investments that are not expressly authorized by this regulation. Under this proposal, written requests by System institutions would: (1) Describe the proposed project or program in detail; (2) explain its risk characteristics; and (3) demonstrate how such investments are consistent with the System's statutory mandate to serve agriculture and rural communities. In approving such requests, the FCA may impose additional or more stringent conditions than the requirements of this regulation to ensure safety and soundness or compliance with law.

E. Restrictions on Rural Community Investments

Other requirements governing System investments in rural communities are covered by proposed § 615.5176(e). These requirements either pertain to safety and soundness or implement statutory requirements.

1. Portfolio Limit

Proposed § 615.5176(e)(1) would authorize each System bank, association, or service corporation to make rural community investments in an amount not to exceed 150 percent of the institution's total surplus. The proposed portfolio limit on rural community investments ensures that lending to farmers, ranchers, aquatic producers, cooperatives, and other borrowers that own the FCS remains the primary activity of System institutions. At the same time, the proposed limit provides the FCS with the flexibility to make investments in an amount that offers meaningful assistance to rural communities and their residents. This limit on rural community investments is compatible with limits that the Act and other FCA regulations impose on System activities that are related to the System's mission.

Based on financial information reported as of December 31, 2007, the proposed limit would authorize the System to invest up to a total of $35.8 billion in rural community investments.[21] For example, this would permit an FCS association with $1.0 billion in assets and $150.0 million in total surplus to invest up to $225.0 million in rural communities.

The FCA considered the following factors when it decided to propose 150 percent of total surplus as the portfolio limit: (1) The safety and soundness of FCS institutions; (2) the significant needs of rural communities; (3) the FCS's ability and capacity to assist rural communities, and (4) the ability of FCS institutions to fulfill mission objectives. Total surplus provides a basis for each institution's risk tolerance level, and the FCA has historically used this standard to limit System investments in unrated obligations that are less liquid. System institutions also use limits based on similar capital measures to ensure that asset and portfolio concentrations are safely and soundly managed.

This proposed limit also is based on the limits established for the pilot programs. The FCA established individual institution limits equal to 100 percent of total surplus (or in some cases 10 percent of total loans) for investments held under specific pilot programs, and 150 percent of total surplus for an institution's portfolio of all rural community investments. The

[20] Ibid.

[21] This amount is comparable to the regulatory limits established for the System's rural home lending and investments in farmers' notes activities, which are limited to amounts totaling $35.9 billion for each program as of year-end, although actual amounts outstanding under these programs represented 1.3 percent and less than 1 percent of total outstanding loans, respectively.

pilot programs evidence that System institutions exercised caution when making investments in rural communities. Institutions have not approached the portfolio limit. Although the proposed rule establishes an upper regulatory portfolio limit, the FCA expects that each System institution would determine an appropriate internal portfolio limit based on the individual institution's objectives, capital position, risk tolerance, and other factors that it considers appropriate, in accordance with § 615.5133(c).

The FCA also considered the System's need to establish a program of sufficient size that could adequately deliver benefits to rural communities while balancing operational efficiency needs. In establishing the portfolio limit, the FCA sought to ensure that each System institution, large or small, could effectively partner with government agencies and non-System financial institutions in projects that may positively affect their local rural communities.

The current credit crisis emphasizes the importance of funding for rural development projects and enhancing the liquidity of rural credit markets. The portfolio limit curtails the maximum risk exposure of System institutions, and it also encourages partnerships with non-System financial institutions and government agencies that are active in rural development. Collaboration between System institutions and larger, more established financial investors is a way to help rural communities access financing for vital projects, especially during times of economic uncertainty.

2. Obligor Limit

Proposed § 615.5176(e)(2) would establish an obligor limit for investments in rural communities. This provision would not allow any System institution to invest more than 15 percent of its total surplus in investments issued by a single entity, issuer, or obligor. However, the obligor limit would not apply to obligations issued or guaranteed on the full faith and credit of the United States, its agencies, instrumentalities, or corporations. In the event only a portion of the obligation is guaranteed, the non-guaranteed portion of the obligation would remain subject to the obligor limit.

This obligor limit is designed to control undue credit risk from a single counterparty on the capital of any System institution and provide sufficient diversification of an institution's rural community investment portfolio. For safety and soundness reasons, the FCA decided that the obligor limit for rural community investments should be lower than the 20 percent of total capital obligor limit established for investments held by System institutions to maintain liquidity and manage market risks in § 615.5140(d). In contrast to the liquid and marketable securities held under § 615.5140, rural community investments are often unrated and, therefore, capital markets would consider them less liquid. The FCA anticipates that most rural community investments would be held to maturity and would not trade. For these reasons, the FCA proposes an obligor limit for rural community investments that does not exceed 15 percent of the total surplus of each System institution.

This regulatory provision would also require a System institution to count securities that it holds through an investment company towards this 15-percent obligor limit to prevent undue risk concentrations. This provision provides an exception when the investment company's holding of the security of any one issuer does not exceed 5 percent of the investment company's total portfolio. The FCA patterned this provision after § 615.5140(d)(2), which applies to investments that FCS institutions hold through investment companies for the purposes of maintaining liquidity or managing market risks.

The FCA emphasizes that proposed § 615.5176(e)(2) establishes a maximum obligor limit for rural community investments. The FCA expects every Farm Credit institution to establish internal obligor limits based on its financial condition and the size and complexity of securities that it contemplates buying and holding. The obligor limit that each System institution sets should be based on both identified risks and its own risk-bearing capacity.

3. Maturities for Debt Securities in Rural Communities

Proposed § 615.5176(e)(3) would require most rural community investments to mature in no more than 20 years. However, debt securities may mature in not more than 40 years if the United States or its agencies provide a guarantee or a conditional commitment of guarantee for 50 percent or more of the total issuance or obligation. Proposed § 615.5176(e)(3) establishes terms to maturity that are flexible enough to accommodate typical rural development projects that this rule would authorize. This regulatory approach would enable System institutions to participate in USDA and other State rural development programs that provide a supplemental or partial guarantee, which contributes to, or enhances, whole-project financing. Also, investments that fund essential rural community facilities, such as hospitals, police and fire stations, and other emergency service facilities, typically require project financing over longer terms to maturity.

4. Exclusion From the Liquidity Reserve

Proposed § 615.5176(e)(4) would require System banks to exclude rural community investments from their liquidity reserve under § 615.5134 of this part. System banks may purchase and hold the eligible investments listed in § 615.5140 to maintain liquidity reserves, manage interest rate risk, and invest surplus short-term funds in accordance with § 615.5132. Only investments that can be promptly converted into cash without significant loss are suitable for achieving these objectives. Rural community investments are not suitable for liquidity purposes or market risk management because these investments do not typically carry ratings assigned by a Nationally Recognized Statistical Rating Organization and are not actively traded in the established secondary markets.

5. Association Investments

Proposed § 615.5176(e)(5) would implement sections 2.2(10) and 2.12(18) [22] of the Act, which require each funding bank to supervise and approve the investment activities of its affiliated associations. System banks may discharge their statutory and regulatory responsibility to approve and supervise an association's rural community investments through covenants in the general financing agreement, policies, or other appropriate formats. System banks may also provide advisory, analytical, and research services that help their affiliated associations to devise strategies for investing in rural communities and managing these assets.

6. Attribution of Service Corporation Investments

Proposed § 615.5176(e)(6) would require System service corporations to attribute all rural community investments to their System institution parents based on the ownership percentage of each bank or association. This provision would prevent FCS institutions from utilizing service corporations to exceed the regulatory limits on rural community investments.

[22] 12 U.S.C. 2073 (10) and 2093 (18).

F. Management of Rural Community Investments

Proposed § 615.5176(f) addresses rural community investment management practices at FCS institutions and ensures that System institutions invest in rural communities in a safe and sound manner. If a Farm Credit System institution chooses to invest in rural communities, proposed § 615.5176(f) would require its board of directors to first adopt written policies for managing the institution's investments. These investment management policies must be appropriate for the levels, types, and complexities of each institution's rural community investments. Proposed § 615.5176(f) would also require the board of directors ensure the institution's implementation of procedures and internal controls that ensure compliance with the board's policies and the regulation.

Additionally, proposed § 615.5176(f) would require these written policies to comply with § 615.5133, which governs management practices for investments held for liquidity and risk management. Although rural community investments differ from liquid investments, strong and disciplined investment management practices are essential to the safety and soundness of all investment activities within System institutions. As a result, sound investment management practices prescribed by § 615.5133 are also applicable to rural community investments and, for this reason, the FCA is extending § 615.5133 to rural community investments.

Existing § 615.5133 requires a System institution's investment management policies to address risk tolerance, delegations of authority, internal controls, securities valuation, and reporting to the board. Also, § 615.5133 requires that investment policies be appropriate for the size, type, and risk characteristics of the institution's investments. The FCA expects each System institution to fully and carefully evaluate its risk tolerance in accordance with § 615.5133(c) when it considers purchasing any rural community investments. Finally, proposed § 615.5176(f) expressly exempts those rural community investments that System institutions classify and account for as held-to-maturity under generally accepted accounting principles from the securities valuation requirement in § 615.5133(f). This exemption is based on the different accounting classifications for these securities.

G. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.1, 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2001, 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); 7 U.S.C 2009cc *et. seq.*; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart F—Property, Transfers of Capital and Other Investments

2. A new § 615.5176 is added to subpart F to read as follows:

§ 615.5176 Rural community investments.

(a) *Rural communities.* As authorized by this section, each Farm Credit System (System) bank, association, or service corporation (hereafter ''institution'') may make rural community investments. All investments that any System institution makes under this section in rural communities must be outside an urbanized area as determined by the latest decennial census of the United States.

(b) *Debt securities.* Each institution may make investments in rural communities by purchasing and holding debt securities. For the purposes of this section, debt securities are obligations that are commonly recognized in the established capital markets as a medium for investment. Debt securities exclude commercial loans and any instrument or transaction that is more similar to a commercial loan than to a traditional investment instrument or transaction. Debt securities include government obligations, corporate debt obligations, revenue bonds, asset-backed securities, as defined by § 615.5131(a), and mortgage securities, as defined by § 615.5131(h). Debt securities that institutions purchase and hold under this section must provide funding in rural communities for:

(1) Essential community facilities such as hospitals, clinics, emergency services, and schools;

(2) Basic transportation infrastructure, such as roads, bridges, and other public transportation systems;

(3) Revitalization projects that rebuild rural areas recovering from disasters where an emergency has been declared pursuant to law;

(4) Rural development projects for which the issuer, sponsor, or provider of a guarantee is:

(i) The United States or any of its agencies, instrumentalities, or corporations, under programs that have the specific purpose of directly financing economic development in rural areas; or

(ii) Any State, the Commonwealth of Puerto Rico, local or municipal governments, or other political subdivisions.

(5) Non-System financial institutions for their activities that support rural development.

(c) *Equity investments.* System institutions may also make investments in:

(1) *Rural Business Investment Companies* that are established and operate in accordance with 7 U.S.C. 2009cc *et seq.;* or

(2) *Venture capital funds* that are established to promote economic development and job opportunities in businesses located in rural communities, so long as an institution does not:

(i) Invest more than 5 percent of its total surplus in venture capital funds and more than 2 percent of its total surplus in any one venture capital fund;

(ii) Hold more than 20 percent of the voting equity of any one venture capital fund;

(iii) Participate in the routine management or operation of any venture capital fund;

(iv) Allow any institution director, officer, or employee to serve as director, officer, employee, principal shareholder, or trustee of any venture

capital fund, or of any entity funded by, or affiliated with any venture capital fund; or

(v) Participate in any decision or action of any venture capital fund involving or affecting any customer of the institution.

(d) *Other investments approved by the Farm Credit Administration.* System institutions may make other investments in rural communities that are not expressly authorized by this section if they are approved by the Farm Credit Administration. Written requests for Farm Credit Administration approval must describe the proposed project or program in detail, explain its risk characteristics, and demonstrate how such investments are consistent with the statutory mandate of the Farm Credit System.

(e) *Restrictions on rural community investments*—(1) *Portfolio limit.* An institution must not invest more than 150 percent of its total surplus in rural community investments.

(2) *Obligor limit.* An institution must not invest more than 15 percent of its total surplus in rural community investments issued by any single entity, issuer, or obligor. This obligor limit does not apply to obligations of the United States or its agencies, instrumentalities, or corporations. An institution must count securities that it holds through an investment company towards the obligor limit of this section unless the investment company's holding of the securities of any one issuer does not exceed 5 percent of the investment company's total portfolio.

(3) *Maturities for debt securities.* Debt securities purchased by institutions under this section must mature in not more than 20 years, except that debt securities may mature in not more than 40 years if the United States or its agencies provide a guarantee or a conditional commitment of guarantee for 50 percent or more of the total issuance or obligation.

(4) *Exclusion from the liquidity reserve.* No Farm Credit bank shall include any investment made in accordance with this section in its liquidity reserve under § 615.5134 of this part.

(5) *Association investments.* A System association may hold rural community investments only with the approval of its funding bank. Each district Farm Credit bank must annually review all rural community investments held by its affiliated associations.

(6) *Attribution of service corporation investments.* All investments in rural communities that service corporations hold under this section must be attributed to their System institution parents based on the ownership percentage of each bank or association.

(f) *Management of rural community investments.* Before a System institution invests in rural communities, its board of directors must first adopt written policies for managing the institution's rural community investments. Investment management policies must be appropriate for the levels, types, and complexities of each institution's rural community investments. These written policies must comply with requirements of § 615.5133. Investments made under this section that System institutions classify and account for as held-to-maturity securities in accordance with generally accepted accounting principles are exempt from the requirements of paragraph (f) of § 615.5133. The board of directors must ensure that the institution implements procedures and internal controls to ensure compliance with the board's policies and the regulation.

Dated: June 10, 2008.

Roland Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E8–13382 Filed 6–13–08; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0366; Airspace Docket No. 08–ANM–5]

Proposed Establishment of Class E Airspace; Weiser, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Weiser Municipal Airport, Weiser, ID. Additional controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Weiser Municipal Airport, Weiser, ID. The FAA is proposing this action to enhance the safety and management of aircraft operations at Weiser Municipal Airport, Weiser, ID.

DATES: Comments must be received on or before July 31, 2008.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2008–0366; Airspace Docket No. 08–ANM–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2008–0366 and Airspace Docket No. 08–ANM–5) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2008–0366 and Airspace Docket No. 08–ANM–5''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through

the FAA's Web page at *http://www.faa.gov* or the **Federal Register** 's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Weiser Municipal Airport, Weiser, ID. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAP at Weiser Municipal Airport, Weiser, ID. This action would enhance the safety and management of aircraft operations at Weiser Municipal Airport, Weiser, ID.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the U.S. Code subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103.

Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Weiser Municipal Airport, Weiser, ID.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM ID, E5 Weiser, ID [New]

Weiser, Municipal Airport, ID
(Lat. 44°12′17″ N, long. 116°57′38″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Weiser Municipal Airport.

* * * * *

Issued in Seattle, Washington, on June 9, 2008.

Clark Desing,

Manager, Operations Support Group, Western Service Area.

[FR Doc. E8–13514 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–5087–N–04]

RIN 2502–AI52

Standards for Mortgagor's Investment in Mortgaged Property: Additional Public Comment Period

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document provides additional background information and requests additional public comment for HUD's rulemaking on Standards for Mortgagor's Investment in Mortgaged Property.

DATES: *Comment Due Date:* August 15, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title.

Comment by Mail. Please note that due to security measures at all Federal agencies, submission of comments by mail often results in delayed delivery.

Electronic Submission of Comments. HUD now accepts comments electronically. Interested persons may now submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD *strongly encourages* commenters to submit comments electronically. Electronic submission allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available for public viewing. Commenters should follow the instructions provided at *http://www.regulations.gov* to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

Public Inspection of Public Comments. All comments and communications submitted will be available, without revision, for inspection and downloading at *http://www.regulations.gov.* Comments are also available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the Regulations Division.

Due to security measures at the HUD Headquarters building, please schedule an appointment to review the comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone number 202–708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

With this notice, HUD is republishing, for public comment, a proposed rule that would amend HUD policy concerning downpayment assistance for Federal Housing Administration (FHA) borrowers. HUD's current policies in connection with downpayment assistance have given rise to a practice known informally as seller-funded downpayment assistance that has resulted in disproportionately high borrower default and claim rates among FHA borrowers. Over time, the rate of defaults, foreclosures, and claims has increased so dramatically that the practice has significantly jeopardized FHA's ability to maintain the solvency, as discussed herein, of its insurance fund and to facilitate the provision of affordable home financing to millions of American families.

HUD's proposal, if implemented, will without question exact a major change in its downpayment assistance policy. It would eliminate a practice that has heretofore been allowable and that has been actively engaged in for many years. Even so, the conceptual basis for the change is consistent with a downpayment assistance policy that has been in existence from the inception of the FHA single family insurance program.

HUD's current policy disallows downpayment assistance directly from an entity, such as a seller of a home, that would derive a financial benefit from the sale. The basis for this policy is that such an entity, standing to derive a financial benefit from the sales transaction, may promote its own interest in the transaction to the detriment of the buyer. The current policy is aimed at ensuring that downpayment assistance is indeed a gift to the borrower and that it will not ultimately distort the economics of the transaction to the detriment of the borrower and HUD.

HUD's proposal to amend its regulation is based on this same premise, and seeks to disallow downpayment assistance from any entity that stands to derive a financial benefit from the sales transaction. The major proposed change to HUD's downpayment assistance policy is that it would apply this prohibition irrespective of whether that assistance is made directly or indirectly to the homebuyer. The data displayed in this notice clearly demonstrates the adverse impact of allowing the current policy to continue. HUD is concerned not only about the practice itself, but also about the consequences of the practice on homebuyers participating in FHA insurance programs and on the FHA insurance fund that is there to serve those homebuyers. A practice simply cannot be tolerated when default rates and claim rates for more than a third of home purchase loans it insures range between 2 and 3 times those applicable to the norm. The counterargument that many people have been helped into homeownership by this practice, even if accepted at face value, pales in light of the damage done to homebuyers who have not been able to retain their homes and to FHA's ability to meet its mission of increasing access to *sustainable* homeownership.

Understanding that the current situation is untenable, HUD has grappled with the issue of how to best address the problem over a period of years. This is evidenced in actions, discussed in the text below, that include exploring rulemaking and legislative solutions that did not come to fruition. While HUD will consider alternative measures to eliminating the practice, piecemeal solutions do not cure but only postpone a viable solution, while extending the damage. In essence, borrowers are being harmed and the solution does not lie in spreading the damaging consequences among an even broader universe of borrowers. The FHA insurance fund is teetering on credit insolvency. Such a circumstance is never welcomed, but especially not when the FHA is trying to be a stabilizing force during the worst housing crisis in generations.

Therefore, HUD is proposing an action that would advance the interests of the public and is a reasonable exercise of agency discretion.

HUD's decision to publish this notice is responsive to court orders issued by the U.S. District Courts for the Eastern District of California, on February 29, 2008, and the District of Columbia, on March 5, 2008.

On October 1, 2007, HUD published a final rule entitled ''Standards for Mortgagor's Investment in Mortgaged Property'' (72 FR 56002). Like the rule reproposed for comment here, that rule sought to eliminate the use of downpayment assistance from financially interested parties in FHA-insured single-family mortgages. The October 1, 2007, final rule was challenged in the U.S. District Court for the District of Columbia and in the U.S. District Court for the Eastern District of California by organizations that provide seller-funded downpayment assistance, as defined herein. On February 29, 2008, the U.S. District Court for the Eastern District of California set aside the final rule and remanded the matter to HUD for further action consistent with its order. *Nehemiah Corporation of America* v. *Jackson, et al.*, No. S–07–2056 (E.D. Cal.). The court found, among other things, that HUD failed forthrightly to explain that the rule reversed its prior practice of allowing seller-funded downpayment assistance (*Id.* at 19–20) and that HUD failed to respond adequately to certain categories of comments (*Id.* at 21–24). The court also disqualified then-HUD Secretary Alphonso Jackson from participating in the remanded proceedings.

After issuing an order on October 31, 2007, preliminarily enjoining HUD's enforcement of the final rule, on March 5, 2008, the U.S. District Court for the District of Columbia vacated the final rule and also remanded it to HUD for further proceedings consistent with that court's opinion. *Ameridream Inc., et. al.*, v. *Jackson*, No. 07–1752 (D.D.C. March 5, 2008) and *Penobscot Indian Nation, et. al.*, v. *HUD*, No. 07–1282–PLF (D.D.C. March 5, 2008). The court found, among other things, that HUD violated the Administrative Procedure Act by failing to allow comment on critical factual material and by failing to offer a rational explanation for the final rule. *Id.* at 6. The court held that an internal analysis of HUD's loan portfolio referenced only in the final rule constituted critical factual information that, with at least a summary of the specific data and methodology on which the analysis relied, should have been disclosed during the rulemaking proceeding. *Id.* at 11–12. The court also held that HUD's explanation for the rule relied on sources that did not support its conclusions. *Id.* at 18.

Pursuant to the courts' orders, this publication provides notice that now former Secretary Jackson, who resigned effective April 18, 2008, has not participated in the further promulgation of the rule proposed on May 11, 2007, entitled ''Standards for Mortgagor's Investment in Mortgaged Property'' (72 FR 27048). HUD will separately publish

a notice vacating the October 1, 2007, final rule. This publication also addresses the courts' concerns by acknowledging that the proposed rule marks a clear departure from HUD's prior practice. With respect to the concern that HUD previously had failed to provide critical factual information and otherwise provided an insufficient rationale for the rule, this notice provides additional explanation and data, including analyses of HUD's loan portfolio and access to the data on which those analyses rely. The Regulatory Flexibility Act section has been revised to address only the impact on entities that would be directly affected by the rule. This notice also reopens the comment period for 60 days for the submission of comments on that additional information and on the May 11, 2007, proposed rule, as revised by the October 1, 2007, rule. At the end of the comment period, HUD will review the comments and determine whether to issue a final rule, and will publish a response to significant comments as appropriate. To address the courts' concern with HUD's response to prior public comments, if HUD decides to issue a final rule, HUD will also provide additional responses to those significant comments submitted in response to the May 11, 2007, Notice of Proposed Rulemaking.

If, after reviewing the comments, HUD issues a final rule, it would be effective 180 days from the date of publication with regard to all insured mortgages involving properties for which contracts of sale are dated on or after the effective date.

I. The Proposed Rule

Section 203(b)(9) of the National Housing Act (12 U.S.C. 1709(b)(9)) requires, for a mortgage to be eligible for insurance by FHA, the mortgagor (with narrow exceptions) to pay on account of the property at least 3 percent of the cost of acquisition. The current implementing regulations at 24 CFR 203.19 are silent about permissible or impermissible sources of the mortgagor's investment, although some sources are specifically permitted under the statute.[1]

Paragraph 2–10.C. of FHA's underwriting guidelines, HUD Handbook 4155.1, has long provided that the 3 percent cost of acquisition, i.e., the downpayment, may include an ''outright gift'' to the borrower from relatives, charitable organizations, government entities, and certain others. (HUD Handbook 4155.1 is available at *http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4155.1/index.cfm*.) It further provides, however, that gifts may not be made by any person or entity with an interest in the sale of the property. Such payments are considered self-interested inducements to purchase a particular property rather than true gifts for the borrower's personal investment. In other words, downpayment assistance from those who receive a financial benefit from the sale may promote the sale on any terms, even terms that may be adverse to the sustainability of the borrower's mortgage and homeownership. A disinterested gift of downpayment funds, on the other hand, does not distort the fundamental economics of the transaction and so does not conflict with the borrower's interest in achieving sustainable homeownership.

On May 11, 2007, HUD published a proposed rule to do two things: codify standards governing a mortgagor's investment in property with a mortgage insured by FHA, and specify prohibited sources for a mortgagor's investment. Specifically, the proposed rule would have codified HUD's longstanding practice of allowing a mortgagor's investment to be derived from gifts by family members and certain organizations, but not from gifts by sellers or other persons that financially benefit from the transaction. It had also been HUD's practice to permit a mortgagor's investment to be derived from funds provided by charitable organizations that were ultimately reimbursed directly or indirectly by sellers of the properties involved in the transactions. The May 11, 2007, proposed rule marked a clear departure from this last-noted practice. The rule would have established that a prohibited source of downpayment assistance is a payment that consists, in whole or in part, of funds provided by any of the following parties before, during, or after closing of the property sale: (1) The seller, or any other person or entity that financially benefits from the transaction; or (2) any third party or entity that is reimbursed directly or indirectly by any of the parties listed in clause (1). Throughout this preamble, such a third-party payment as described in clause (2) is referred to as ''seller-funded downpayment assistance'' (SFDPA).

HUD concluded that this practice permits the seller or other party that financially benefits from the transaction to accomplish indirectly what could not be done directly. For example, when funds are advanced to the buyer by a downpayment assistance provider that is reimbursed by the seller, there is a *quid pro quo* between the homebuyer's purchase of the property and the seller's ''contribution'' to the downpayment assistance provider. This scheme facilitates the sale at terms potentially more favorable to the seller and, because funds are fungible, it is reasonable to conclude that the donor's funds are the equivalent of the seller's funds. Viewed in this way, it becomes apparent that a prohibited inducement to purchase is present in these transactions, and HUD has concluded that such payments amount to an impermissible gift provided by a person or entity that financially benefits from the transaction. In a transaction involving SFDPA, both the seller, who is the ultimate source of the payment, and the entity that funnels or advances the payment for the seller to the homebuyer (and receives reimbursement and a fee from the seller for its role in the transaction) have an interest in the sale of the property that makes their payments an impermissible source of the buyer's equity investment.

HUD's conclusion is reinforced by a report of the Government Accountability Office (GAO), Report No. 06–24, Mortgage Financing: Additional Action Needed to Manage Risks of FHA-Insured Loans with Down Payment Assistance (November 2005) (hereinafter, November 2005 GAO Report). At the request of Congress, GAO examined the trends in the use of downpayment assistance with FHA-insured loans, its impact on purchase transactions and house prices, and how it influenced the performance of FHA-insured loans. GAO found that downpayment assistance from seller-funded entities alters the structure of the purchase transaction in important ways. First, it creates an indirect funding stream from property sellers to homebuyers that does not exist in other transactions, even those involving some other type of downpayment assistance. Second, property sellers who provided downpayment assistance through nonprofit organizations often raised the sales price of the homes involved in order to recover the required payments that went to the organizations. GAO's analyses of empirical data showed that FHA-insured homes bought with seller-funded downpayment assistance appraised at and sold for higher prices than comparable homes bought without

[1] For example, section 203(b)(9) of the National Housing Act permits family members to provide loans to other family members, and permits the mortgagor's downpayment to be paid by a corporation or person other than the mortgagor in certain circumstances, such as when the mortgagor is 60 years of age or older, or when the mortgage covers a housing unit in a homeownership program under the Homeownership and Opportunity Through HOPE Act (Title IV of Pub. L. 101–625, 104 Stat. 4148, approved November 28, 1990).

such assistance, resulting in larger loans for the same collateral and higher effective loan-to-value (LTV) ratios. That is, homebuyers had less equity in the transaction than would otherwise be the case.[2]

The original 60-day comment period provided in the May 11, 2007, proposed rule was extended by notice (72 FR 37500; July 10, 2007) for an additional 30 days. When the public comment period ended on August 10, 2007, HUD had received approximately 15,000 public comments on the proposed rule, mostly brief statements in similar format and wording that opposed the rule and urged HUD not to eliminate downpayment assistance in connection with FHA-insured mortgages.

On October 1, 2007, HUD promulgated the rule, with a few clarifying revisions, as a final rule to be effective October 31, 2007. The October 1, 2007, rule clarified that a tribal government or a tribally designated housing entity (TDHE), as defined at 25 U.S.C. 4103(21), is a permissible source of downpayment assistance if prerequisites in the rule were satisfied, and also more closely aligned the description of tax-exempt charitable organizations with the description used by the Internal Revenue Service (IRS) for such organizations. This rule never went into effect, however, since it was enjoined and then vacated by the courts.

II. Historical Policy Regarding Seller-Funded Downpayment Assistance

The issue of SFDPA came to HUD's attention in the late 1990s. When this funding scheme first came into being, some local HUD offices approved mortgages with SFDPA for FHA insurance, and other HUD offices did not. As a result, in 1997, a provider of this type of assistance brought a lawsuit against HUD (*Nehemiah Progressive Housing Development Corporation* v. *Cuomo, et al.*, No. S–97–2311–GEB/PAN (E.D. Cal.)) seeking consistent treatment. That suit was settled when the plaintiff's status was confirmed as a tax-exempt charitable organization under Internal Revenue Code (IRC) section 501(c)(3), a permissible source of assistance. HUD also acknowledged that based upon the program-specific information accompanying the plaintiff's submission to the IRS, the program complied with HUD's regulations and guidance pertaining to the source of funds for the borrowers' downpayments. Although downpayment assistance from charitable organizations is permitted, HUD continued to have concerns where the funds provided by an organization to the homebuyer were reimbursed by the seller in the transaction when the seller made a contribution of funds to the charitable organization, often after loan closing.

HUD addressed the subject of prohibited sources of downpayment assistance in a 1999 proposed rule. (See HUD's proposed rule published on September 14, 1999, 64 FR 49956.) In 2001, HUD withdrew the 1999 proposed rule, which had received a large number of public comments critical of the proposal. (See January 12, 2001, notice of withdrawal of proposed rule at 66 FR 2851.) At the time, the volume of loans with such assistance and their potential impact were small. Also, because the payment to the buyers did not come directly from the sellers, it was not clear that inducements to purchase were present in the transactions. Moreover, while FHA had serious concerns about SFDPA, it lacked the historical data to substantiate its adverse effects.

By 2003, with the seller-funded downpayment assistance business growing exponentially, FHA had data tending to show that the performance of the loans made to borrowers relying on SFDPA was poor and that the program flaws could not be addressed with underwriting changes. FHA determined that the most feasible and appropriate solution was to create a new FHA insurance product to serve consumers who were unable to save funds for a downpayment, which would obviate the need for seller-funded downpayment assistance.

In early 2004, a bill was introduced in Congress that would provide FHA with authority to insure a 100 percent financing product.[3] At the same time, FHA commissioned an independent research firm, Concentrance Consulting Group, Inc., to conduct a comprehensive examination of downpayment gift programs administered by nonprofit organizations. The report was the culmination of a 10-month effort, beginning in January 2004, to understand the influence of seller-funded nonprofit downpayment assistance on FHA-insured home loans. The study involved travel to 10 cities and interviews of more than 400 persons involved in mortgage transactions—from homebuyers and sellers to realtors, appraisers, underwriters, loan officers, builders, and downpayment assistance providers. Published on March 1, 2005, the report focused on the operational aspects of the programs in an effort to understand the financial relationships between the various parties involved. It highlighted the harmful features of the programs and concluded that the programs create unsustainable homeownership arrangements.[4] The report served as the basis for FHA's strong push for new legislative authority to offer a 100 percent financing option to borrowers who might otherwise rely on a risky SFDPA program.

In June 2005, when Congress introduced another piece of Zero Down legislation, H.R. 3043,[5] a reformulation of the previous bill, HUD supported the bill because an FHA Zero Down product would be a more affordable, yet still financially sound, alternative for families without savings for a downpayment.[6]

Also in 2005, the research arm of Congress, GAO, produced two reports concerning the risks associated with various proposed and existing FHA insurance products, including loans with zero downpayment and those with SFDPA.[7] HUD agrees with the court, in *Ameridream, Inc.*, v. *Jackson* and *Penobscot Indian Nation* v. *HUD*, that the first of these two reports (the February 2005 report discussing proposed FHA insurance products) provides little meaningful support for the current rule, which addresses the risks associated with SFDPA. However, the November 2005 GAO Report directly addressed the risks associated with loans with SFDPA and represents independent corroboration of the

[2] November 2005 GAO Report, pp. 3–4. This report can be found at *http://www.gao.gov/new.items/d0624.pdf.*

[3] See H.R. 3755, Zero Downpayment Act of 2004, at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h3755ih.txt.pdf.*

[4] *An Examination of Downpayment Gift Programs Administered by Non-Profit Organizations,* Final Report, HUD Contract C–OPC–22550/M0001, March 1, 2005. Available at: *http://www.hud.gov/offices/hsg/comp/rpts/dpassist/conmenu.cfm.*

[5] See H.R. 3043, Zero Downpayment Pilot Program Act of 2005, at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h3043ih.txt.pdf.*

[6] An FHA zero downpayment product would not pose the credit risks associated with SFDPA, for a number of reasons. First, homebuyers would understand upfront that they are buying a home with no initial equity and would have a realistic view of their options for resale. Also, underwriting requirements and insurance pricing are more easily developed and enforced when tied to a loan product than when tied to variable downpayment sources. In addition, the zero downpayment option is not tied to a particular property whose seller participates in an SFDPA program so that homebuyers can shop and negotiate with any number of sellers with the same bargaining power as a buyer with a true equity investment, which would also help prevent the concentration of 100 percent LTV loans in weak housing markets.

[7] See Report No. 05–194, Mortgage Financing: Actions Needed to Help FHA Manage Risks from New Mortgage Loan Products (February 2005); and November 2005 GAO Report.

findings of HUD's internal data analyses and the Concentrance study.

The November 2005 GAO Report found that the problems associated with SFDPA loans (e.g., home price inflation and risk of defaults) are grave enough to merit an outright ban on SFDPA. The FHA Commissioner responded to the GAO's draft report in a letter dated October 25, 2005, which is incorporated in the final published report. The Commissioner acknowledged that GAO's findings confirmed FHA's own analysis and those of the Concentrance study, but expressed the agency's reasons for not pursuing GAO's recommended ban on SFDPA. The Commissioner expressed the agency's desire to provide safer financing without having to exclude traditional FHA borrowers, who are often in need of downpayment funds, and pointed to FHA's pursuit of a zero downpayment insurance product and higher insurance premiums as better alternatives to achieve those goals than banning SFDPA would be. The response to GAO also reiterated a legal opinion of HUD's Office of General Counsel that the structure and the timing of payments in SFDPA transactions did not violate the letter of HUD's underwriting guidelines.[8]

For the reasons noted in the October 25, 2005, response letter to GAO, HUD continued to tolerate SFDPA programs, even though HUD had an ongoing concern about the risks inherent in SFDPA-generated loans, especially given the ever-increasing proportion of these loans in FHA's portfolio.

In May 2006, the IRS issued Revenue Ruling 2006–27, which analyzed a model transaction typical of SFDPA programs and explained that organizations participating in such programs do not qualify as organizations described in IRC section 501(c)(3), because the assistance involved not a downpayment gift, but rather, ''represents a rebate or purchase price reduction.'' The Revenue Ruling stated that in these transactions, the so-called downpayment gifts ''do not proceed from detached and disinterested generosity, but are in response to an anticipated economic benefit, namely facilitating the sale of a seller's home.''

HUD acknowledges the court's finding in *Ameridream, Inc.,* v. *Jackson* and *Penobscot Indian Nation* v. *HUD* that IRS Revenue Ruling 2006–27 on its face does not prove that seller-funded downpayment assistance loans are inherently and unacceptably risky. Nevertheless, the Revenue Ruling reinforced HUD's concerns with these transactions through its determination that they do not involve a gift, but a *quid pro quo*. The Revenue Ruling also highlighted an inconsistency in HUD's prior interpretation of these transactions with those of other Executive Branch agencies.

HUD did not take regulatory action at any point in time from 1999 through 2006, because the agency was anticipating a legislative solution to the problem. During that time frame, the portion of borrowers relying on SFDPA grew to represent over a third of all home purchase loans insured by FHA. As a result of the growth in the business and the poor performance, these loans have increased risk to FHA's fiscal soundness, a risk that threatens the opportunities of all (not just homeowners in need of downpayment assistance) to obtain single family FHA-insured financing. Because no legislative solution has yet materialized, HUD determined that the most prudent option was, and remains, to prohibit SFDPA through the rule that HUD initially proposed on May 11, 2007.

III. HUD's Analysis of Its Loan Portfolio Data

A. HUD's Database

HUD, using information submitted by lenders, regularly monitors the performance of FHA-insured loans. Since the mid-1990s, FHA has maintained a Single Family Data Warehouse (SFDW), where data from its various program systems are uploaded on a monthly basis. At the present time, the SFDW contains 34,000,000 records, each capturing the characteristics and performance of a loan insured by FHA. Because each FHA program system uses the same case number for each insured loan, the SFDW is able to link more than 400 fields containing borrower demographic and loan application, origination, termination, and recovery data in one database. These data are used by an independent contractor to assess the performance of insured loans for the annual actuarial review of the Mutual Mortgage Insurance Fund (MMIF or Fund), FHA's largest insurance fund. These data are also used by HUD staff to calculate FHA's mortgage insurance liability for FHA's annual financial statements and to estimate credit subsidy for HUD's budget. For this reason, the data are audited by the independent auditor hired by HUD's Office of Inspector General and are closely reviewed by the Office of Management and Budget (OMB).

For the single-family portfolio, HUD's monitoring includes tracking performance by source of downpayment funds, such as the borrower's own funds, or funds provided by family members, government agencies, or nonprofit organizations, as reported to HUD by lenders. The ''nonprofit'' category source of downpayment funds consists of entities that hold the status of charitable organizations. Analysis of the data, however, indicates, by identifying the entities that provide the downpayment assistance, that more than 95 percent of the downpayment assistance provided under the ''nonprofit'' category is seller-funded.[9] Therefore, the term ''nonprofit,'' as used in this preamble discussion and tables, refers to organizations that hold the status of charitable organizations and provided SFDPA. Though HUD does not publish information on performance by downpayment source in formal reports, the data are regularly reviewed internally by HUD, and they have been made available at various times to GAO, OMB, and Congress. As demonstrated by the discussion in this preamble and the related tables included in the Appendix to this publication, loan performance data maintained by HUD on FHA-insured mortgages has provided a consistent story over time: Loans with nonprofit downpayment assistance, i.e., SFDPA, perform much worse than do other single family loans insured by FHA.

To give the public the opportunity to examine and comment fully on HUD's data analyses, HUD is making the underlying data available online during this additional comment period. The data files provide loan-level records that will enable interested parties to explore issues regarding downpayment assistance provided to homebuyers utilizing FHA insured mortgage financing. The files are compressed using standard protocols that should be readable by a wide variety of software. The particular software product used to create these files is WinZip 9.0 (SR–1). The URL for the FHA Purchase Loan Endorsement Data Web page is: *http://www.hud.gov/offices/hsg/comp/rpts/pled/pledmenu.cfm.*

B. Increase of Seller-Funded Downpayment Assistance Loans

The substantial increase over time of loans with downpayment assistance from nonprofit groups (nonprofit-assisted loans) in the FHA-insured single-family portfolio has dramatically changed the fundamental insurance risk

[8] See November 2005 GAO Report, pp. 89–91.

[9] This comports with the November 2005 GAO Report indicating that about 93 percent of assistance from nonprofit organizations was funded by sellers. See November 2005 GAO Report, p. 14.

of that portfolio. As can be seen in Table 1 in the Appendix to this rule, these loans in Fiscal Year (FY) 2007 made up more than 35 percent of all home purchase loans insured by FHA. In FY 2000, they were less than 2 percent of FHA's single family purchase loan activity.

As the discussion and data presented below demonstrate, the substantial increase over time of nonprofit-assisted loans has created a financially unsustainable situation for the FHA insurance fund. Table 1, as noted, and all the other Tables referenced in this preamble discussion appear in the Appendix at the end of this document.

C. Default and Claim Rate Comparisons for Loans With Nonprofit Downpayment Assistance

1. Default Rates

Tables 2, 3, and 4 provide a summary of default rates on home purchase loans insured by FHA. Default is measured here as a loan that is at least 90 days in arrears. Since the 1980s, loan servicers have reported to HUD all 90-day default events for FHA-insured loans. Activity on each default episode is reported to HUD until there is a final resolution, be that a cure of the default, a foreclosure, or some other outcome.[10] Three summary statistics are used here—the early default rate, the ever-defaulted rate, and the current default rate. Each one is calculated separately by source of downpayment funds used to purchase the home, and shown by year of insurance endorsement (i.e., an ''insurance cohort''). The left half of each table lists the calculated default rates, and the right half provides a direct comparison of the performance of loans receiving each type of downpayment assistance with the performance of loans in which borrowers use their own funds for the downpayment. The comparisons in each table show that nonprofit downpayment-assisted loans have the highest default rates among all FHA-insured home-purchase loans.

The first default statistic, shown in Table 2, is the early default rate. It measures the share of loans that experience a (90-day) default within the first 24 months of scheduled mortgage payments, and is calculated by dividing the number of such loans by the total number of insured loans in an insurance cohort. HUD uses this statistic as a first indication of the level of claim payments that might be expected from any given insurance cohort. The ratios found on the right-hand side of Table 2 are calculated by dividing the early-default rate for each type of downpayment assistance by the default rate for loans with borrower-funded downpayments, within each insurance cohort.

The early default rate of loans with nonprofit downpayment assistance has consistently been more than twice the rate found on loans with borrower-funded downpayments, with the average multiple across the FY 2000–2005 period being 2.43. The early default rate for loans with nonprofit downpayment assistance is also nearly twice that of loans with downpayments provided by a family member. These early default rate comparisons are a leading indicator of eventual foreclosure and claim rate patterns, as will be seen in Tables 5 and 6. Loans with nonprofit downpayment assistance have elevated foreclosure and claim rates commensurate with their elevated early default rates.

The second default statistic, found in Table 3, is the ever-defaulted rate. This measures the share of borrowers who have ever had a delinquency that extended beyond 90 days. It is calculated by dividing the number of borrowers with at least one (90-day) default since loan origination by the number of insured loans in an insurance cohort. The ratios on the right-hand side of Table 3 are calculated like those in Table 2. The ratio of the ever-defaulted rate for nonprofit downpayment-assisted homebuyers, to that of homebuyers with FHA-insured loans using their own downpayment funds, is at or above 2.00 for all insurance cohorts since FY 2003 and close to that mark for FY 2002. The FY 2007 insurance cohort shows the same pattern as have earlier insurance cohorts. The second default statistic shows that, for loans endorsed from 2000 to 2005, between approximately 24 and 29 percent of loans with seller-funded assistance had experienced a 90-day delinquency, compared to approximately 11 to 16 percent of loans without downpayment assistance. This default statistic is consistent with GAO's findings in 2005 that loans with downpayment assistance from seller-funded nonprofit organizations do not perform as well as loans with downpayment assistance from other sources. GAO used samples of FHA-insured, single family purchase money loans endorsed in 2000, 2001, and 2002 and concluded that between 22 and 28 percent of loans with seller-funded assistance had experienced a 90-day delinquency, compared to 11 to 16 percent of loans with downpayment assistance from other sources and 8 to 12 percent of loans without downpayment assistance.[11]

The last default statistic shown in the Appendix is the current default rate (Table 4). That measure is a snapshot at a point in time that focuses on all loans still active on a given date. The date used for this snapshot is February 29, 2008. The current default rate is computed by dividing the number of loans in default on that date by the number of loans active on the same date in an insurance cohort. The ''Nonprofit'' column in the right-hand side (''Ratios* * *'') of Table 4 shows that the share of loans with nonprofit downpayment assistance that were in default on the snapshot date was near or above two times that of home-purchase loans with borrower-funded downpayments for all insurance cohorts since FY 2001. One will notice that the current-default-rate ratios for older insurance cohorts are somewhat smaller than those for new insurance cohorts. This difference is primarily due to the fact that the weakest loans in those older insurance cohorts have already gone to foreclosure and claim, leaving fewer weak loans to default in the present. When the entire nonprofit downpayment assistance portfolio is compared to the entire borrower-funded downpayment assistance portfolio, across all insurance cohort years, the default-rate ratio on February 29, 2008, was 1.80. The actual default rate for loans with nonprofit downpayment assistance shown on the left-hand side of Table 4 was 11.19 percent and that for borrower-funded purchase loans was 6.22 percent.

2. Historical Claim Rates

Table 5 focuses on the insurance claim-payment experience of FHA, comparing home purchase loans by source of downpayment funds and by year of insurance cohort. Claims generally are paid by FHA to lenders after a lender acquires title to a property, generally through a foreclosure process.[12] The metric used in the left-hand panel of Table 5 is the to-date claim rate, which measures the number of insurance claims paid as a percentage of all loans insured by FHA, as of a given date. The date used here

[10] Since October 2006, HUD has collected information on all loan defaults, starting at 30-days delinquency. Ninety-day delinquencies, however, are an industry standard for defining the point at which foreclosure (and insurance claim payment) become a significant concern. Therefore, HUD analysis of the potential risk of insurance claim payments continues to use 90-day delinquency as the defining metric of default.

[11] November 2005 GAO Report, pp. 26–27.

[12] The lender/servicer bids at the foreclosure auction. Once the foreclosure has been completed, the lender/servicer, as the winning bidder, usually transfers title of the property to HUD. FHA then pays an insurance claim to the lender upon conveyance of acceptable title to HUD.

is February 29, 2008. Insurance cohorts that are older will have had more time for borrowers whose defaults result in foreclosure and an FHA insurance claim. Consequently, to-date claim rates for the FY 2000 and FY 2001 insurance cohorts are greater than those for more recent insurance cohorts.

The data in Table 5 indicate that when nonprofit downpayment assistance is provided, borrowers, as a group, are less likely to sustain the financial responsibilities of a home mortgage than are borrowers receiving downpayment funds from other sources. With to-date claim rates that exceed three times those of borrower-funded purchase loans, the insurance risk is higher than FHA has ever considered acceptable. Such high claim rates cause significant harm to families who are displaced by foreclosures, and they also have the potential of destabilizing neighborhoods.

3. Projected Lifetime Claim Rates

Each year, HUD hires an independent contractor to perform a full actuarial study of its single family insured portfolio. That study, which is required by law, covers all insurance programs under the umbrella of the MMIF. The Fund encompasses around 90 percent of all FHA single family insurance activity. Loans not included are those for condominiums and section 203(k) purchase-and-rehabilitation loans, along with some minor targeted programs.[13] The formal Actuarial Review published from the actuarial study measures to-date performance of each insurance cohort, and provides projections of ultimate claim rates over the 30-year life of each insurance cohort. That Actuarial Review is forwarded to Congress each year. The work of the independent contractor is also scrutinized each year by independent auditors hired by the Office of the Inspector General at HUD.

For the last 3 years, the actuarial study contractor has identified nonprofit downpayment assistance as adding an especially high risk factor to the FHA portfolio. First, in the FY 2005 Actuarial Review (available at *http://www.hud.gov/offices/hsg/comp/rpts/actr/2005actr.cfm*), statistical results were presented that showed the additional risk of claim in any given calendar quarter arising from various forms of downpayment assistance. The additional risk posed by nonprofit downpayment assistance was measured as three times that from family downpayment assistance, and 1.5 times that from government assistance.[14] The FY 2006 Actuarial Review (available at *http://www.hud.gov/offices/hsg/comp/rpts/actr/2006actr.cfm*) alerted HUD that continued high concentrations of business coming from loans with nonprofit downpayment assistance would cause FHA to suffer net losses.[15]

The FY 2007 actuarial study and Actuarial Review provide a new level of analysis on expected claim rates over the life of FHA-insured loans. Since the statistical model that predicts claims now includes a factor for borrower credit scores, the actuarial study contractor was able to provide HUD with projections of lifetime claim rates by cross-sections of credit-score and loan-to-value (LTV) classes. Table 6 shows such cross-sections for loans insured in 3 recent years, FY 2005, FY 2006, and FY 2007. High-LTV loans are separated into those with nonprofit downpayment assistance, and those without. Only the high-LTV group (above 95% LTV) needs this separation because property sellers that participate in, and contribute to the nonprofit programs, generally provide only the minimum required 3 percent downpayment. The ratio of projected claim rates on nonprofit assisted loans to other above-95%-LTV loans is presented in the last column of Table 6.

Comparisons found in Table 6 show smaller differences in lifetime claim rates than might be inferred from differences in the to-date claim rates presented in Table 5. One reason for the difference is the comparison in Table 6 is made only on high-LTV loans, which have higher claim rates than do lower-LTV loans. Comparisons in Tables 2, 3, 4, and 5, however, are across all LTV ranges. Nevertheless, for all three insurance cohorts shown in Table 6, loans with nonprofit downpayment assistance are more than twice as likely to go to foreclosure and FHA insurance claim over their lifetime as all other high-LTV loans.

As claim rates rise for all loans insured during housing market downturns, such as FY 2007, the high insurance claim ratio for loans with nonprofit downpayment assistance and the large share of loans utilizing those downpayment assistance programs present a severe financial challenge to FHA. The expected lifetime claim rate on loans with nonprofit downpayment assistance in the FY 2005 insurance cohort is close to 17 percent, and for FY 2007 is above 28 percent. The 16.79 percent for FY 2005 contrasts with a 6.94 percent expected lifetime claim rate for other high-LTV loans insured during the same period. FY 2007 is a particularly challenging year as it starts with a decline in home prices across much of the nation. The 28.49 percent expected claim rate on loans with nonprofit downpayment assistance insured in FY 2007 contrasts with a 12.25 percent expected claim rate on all other high-LTV loans. It is not possible under current law to charge insurance premiums in an amount sufficient to cover this increased insurance claim risk, even if the maximum allowable insurance premiums were charged to all FHA-insured homebuyers.[16]

The claim rates shown in Table 6 are under the base case economic scenario of August 2007, which relied upon forecasts of house prices and interest rates provided by Global Insight Inc. Since that time, housing market conditions have deteriorated more than was expected, and the projected claim rates on the FY 2005 to FY 2007 insurance cohorts are now even higher than those shown in Table 6. Because the expected claim rates on loans with nonprofit downpayment assistance are well above the rate that can be supported by reasonable premium charges in normal economic conditions, the financial problems caused by these loans are only compounded during housing market downturns.

4. Higher Losses on Claims

An additional problem with loans with nonprofit downpayment assistance is that homes purchased using this form of assistance are often purchased at inflated prices. The price increase is made, or the seller refrains from accepting a lower price that would have been acceptable in an arms-length transaction, so that the seller can receive the same net proceeds from selling to the homebuyer needing downpayment assistance, as the seller would receive from a buyer without downpayment assistance. This business practice was confirmed in a field study performed for HUD by an independent contractor, and statistically validated in research performed by the GAO.[17]

In the November 2005 GAO Report, the GAO analyzed ''a sample of FHA-insured loans settled in March 2005,'' and found that ''for loans with seller-funded down payment assistance, the

[13] These other loans are insured under the General and the Special Risk Insurance Funds.

[14] See Exhibit A–2 on p. A–19 of the FY 2005 Actuarial Review.

[15] See discussion on p. 49 of the FY 2006 Actuarial Review, and Exhibit V–5 on p. 50.

[16] See mortgage insurance premium rates at 12 U.S.C. 1709(c)(2).

[17] The contractor study is that of Concentrance Consulting Group, Inc., *An Examination of Downpayment Gift Programs Administered by Non-Profit Organizations*, ibid. The GAO study is in the November 2005 GAO Report.

appraised value and sales price were higher as compared with loans without such assistance.''[18] The March 2005 study by Concentrance Consulting Group, commissioned by HUD, interviewed more than 400 persons involved in the mortgage industry and corroborates GAO's assessment. The Concentrance study ''found overwhelming evidence that the cost of the seller-funded down payment assistance is added to the sales price, which then increases the allowable FHA loan amount and eliminates any borrower equity in the property.'' [19] Such an inflated sale price does not represent the true value of the property and leads to a higher mortgage amount.

The effect on FHA, in addition to an increase in the amount of insurance claim payments, is increased net losses after disposing of foreclosed properties. Not only do loans with nonprofit assistance have significantly elevated insurance claim rates, 76 percent greater according to the same GAO study,[20] but FHA ultimately suffers greater losses on those claims. The FY 2006 Actuarial Review documents differentiate net loss rates—as a percentage of the unpaid loan balance at the time of default and claim by loans having or not having nonprofit downpayment assistance (see Appendix B of the FY 2006 Actuarial Review).

D. FHA Insurance Fund Solvency

FHA program data is used by an independent contractor to conduct the annual actuarial review of the MMIF, FHA's largest insurance fund. MMIF programs are required to be self-supporting and to generate sufficient receipts to fund a Capital Reserve Account in an amount equal to at least 2 percent of its outstanding insurance-in-force. (See 12 U.S.C. 1711(f).) This Account provides a vehicle for recording the balance of payments between MMIF programs and the federal budget over time. Growth of the Reserve Account occurs as MMIF programs generate budget receipts and as Account balances earn interest over time. Reserve Account balances fall when HUD needs to fund unexpected claims on outstanding loan guarantees. In its 74-year history, the MMIF has always been self-supporting and never required additional appropriations beyond its initial capitalization in 1934, which was paid back by FHA decades ago.

All funds associated with MMIF insurance program operations—including premium collections, claim payments, and proceeds from the sale of foreclosed properties—flow through a separate MMIF Financing Account. In accordance with the Federal Credit Reform Act of 1990, 2 U.S.C. 661, *et seq.*, which requires agencies to estimate the long-term cost to the government of guaranteeing credit (referred to as ''the subsidy cost''), FHA must maintain a balance in the MMIF Financing Account for each insurance cohort (i.e., the loans endorsed in a single fiscal year) sufficient to cover the net cash outflows projected for the insurance cohort over its lifetime. Each year, in the course of preparing the President's Budget, FHA estimates the subsidy cost for the upcoming insurance cohort. As long as expected premium revenues outweigh expected claim costs, HUD can fund the required Financing Account balance and provide net budget receipts that help build Capital Reserve Account balances. Were a situation to arise in which expected premium revenues could not cover expected claim costs, then FHA programs would require a budget appropriation from Congress to help fund the required Financing Account balance.

In order for FHA MMIF programs to both maintain required capital reserves and avoid budgetary appropriations, they must be managed in such a way that generates what is called a ''negative credit subsidy rate.'' The credit subsidy rate (CSR) is the ratio of expected budget outlays or receipts to expected loan volumes. The CSR also is the government's estimated long-term cost, excluding administrative costs, as a percentage of the amount of loans guaranteed. The rate is calculated on a net present value basis over the life of the loans guaranteed in a given fiscal year. The CSR is thus a helpful summary measure of actuarial soundness.

HUD currently has an internal target for a normal-economy CSR of around −1.00 percent for MMIF programs in an insurance cohort. The negative sign means negative outlays, which translates into positive budget receipts. Having such a target provides a cushion for economic downturns, minimizing the chance that the CSR could actually turn positive. Such a target, however, is impossible to achieve today with the resource drain caused by SFDPA. Taken as a whole, loans with SFDPA have a CSR of over +6.00 percent, which means that supporting them costs the FHA program 6 cents for every dollar of these insured loans. Current premium rates cannot cover the cost of such a large CSR for these downpayment-assisted loans. HUD is at the point where continuing to support loans with SFDPA will require budget appropriations for all of the FHA MMIF loans.

On the basis of the FY 2007 independent Actuarial Review, FHA has estimated its credit subsidy requirements for FY 2009. FHA has concluded that if it continued to charge the same 1.5 percent up-front and 50 basis point annual insurance premiums, and continued to serve the same mix of borrowers it served in FY 2007, including the same share using SFDPA, the MMIF program would have a positive credit subsidy rate of 1.12 percent. Assuming estimated loan-guarantee obligations of $110 billion, the MMIF program would require a credit subsidy appropriation of $1.4 billion in order to begin operations in FY 2009. To ward off this eventuality, HUD is proposing to eliminate SFDPA.

E. Sustainable Cross-Subsidization

The data presented above in HUD's analysis of its loan portfolio shows the poor performance of loans with SFDPA relative to loans without such assistance. Due to this poor performance, borrowers with SFDPA require an unsustainable level of premium cross-subsidies from other borrowers. Any attempt to raise premiums to help to cover part of that cost could result in other borrowers being discouraged from using financing with FHA mortgage insurance by the high relative cost to them of providing cross-subsidies to the seller-funded portfolio. This phenomenon is known as ''adverse selection'' and results in the need to continually raise premiums when the pool of cross-subsidizing borrowers declines with each round of price/premium increases. By proposing to eliminate FHA insurance on loans with SFDPA, FHA is endeavoring to reestablish a sustainable level of cross-subsidization in its portfolio so that it can serve more homebuyers, including first-time and minority homebuyers, without the continual need for appropriations. Avoiding a general premium-rate increase is all the more important because lower-income borrowers, who benefit most from FHA's MMIF program, are concentrated in its *less* risky credit score and loan-to-value categories of borrowers, i.e., the categories that would be discouraged from using the program by higher premium rates. See Table 7.

Table 8 shows the distribution of FHA-insured purchase loans in FY 2007, over FICO [21] and loan-to-value ratio categories. Purchase loans with

[18] November 2005 GAO Report, pp. 22–23.

[19] Concentrance Consulting Group Report, p 6.

[20] November 2005 GAO Report, p. 32.

[21] FICO is a credit score developed by the Fair Isaac Corporation and is an acronym for it.

SFDPA appear in the SFDPA row. In FY 2007, such homebuyers constituted over 33 percent of FHA-insured homebuyers (see Table 8).

Table 9 shows the expected lifetime claim rates for purchase loans in each of the FICO and LTV categories defined in Table 8. Expected claim rates increase with increases in LTV and with decreases in FICO scores. That is, they rise as one moves from the upper left to the lower right of the table. Some of these groups of borrowers have excessively high claim rates—above 25 percent. HUD has determined that such high rates are incompatible with homeownership sustainability. In the worst case, borrowers with SFDPA who have FICO scores below 500 have expected claim rates of 61.4 percent. While these borrowers constituted only 0.6 percent of all purchase loans endorsed in FY 2007 (see Table 8), for all homebuyers with SFDPA, the weighted average expected claim rate was over 28 percent.

Even a small number of borrowers with very high expected claim rates places a substantial burden on the remaining borrowers who must provide premium revenues sufficient to cover losses incurred on the high claim-rate group. Table 10 shows credit subsidy rates calculated for loans in each FICO and LTV grouping. It shows that credit subsidy rates for different categories of borrowers vary between −2.95 percent and +20.41 percent. A credit subsidy rate of −2.0 percent generates $2,000 in receipts on a $100,000 loan and $4,000 on a $200,000 loan. On the other hand, a credit subsidy rate of +20.4 percent requires $20,400 in subsidies—from some combination of higher premiums on all borrowers and direct budget appropriations—for a $100,000 loan and $40,800 in subsidies for a $200,000 loan. With such high positive credit subsidy requirements, too many borrowers with good credit are needed to offset the cost of higher-risk, and frequently higher-income, borrowers. Under current law, FHA is prevented from raising up-front premiums above 2.25 percent or annual premiums above 55 basis points. (See 12 U.S.C. 1709(c)(2).) Nevertheless, one might ask whether it would be possible to charge sufficient premiums for loans with SFDPA so that they would not require cross-subsidization. Table 11 shows break-even up-front and annual premiums for SFDPA loans by FICO score category. Except for borrowers with FICO scores greater than 680, up-front and annual premiums would have to be raised to very high levels for example, 5.56 percent upfront and 0.55 percent annually for borrowers with FICO scores between 640 and 680, and 12.09 percent up-front and 2.0 percent annually for borrowers with FICO scores between 500 and 560. Therefore, under the current law, it is not possible to fully offset the risk of SFDPA simply by raising premiums. Even if there were no statutory cap on premium rates charged by FHA, however, it is unlikely that borrowers would opt for an FHA-insured mortgage if the insurance premiums were raised as high as needed to ensure the sustainability of the insurance fund in a scenario where SFDPA is allowed to continue. The large up-front premiums alone, when added to the initial loan balance, would increase expected claim rates even more, as borrowers could have to wait many years before they could sell their properties free-and-clear. Therefore, raising premium rates to extraordinary levels would not be a viable solution, even if the Congress were to authorize such.

IV. Downpayment Assistance From Nonprofits or Any Other Sources—Financial Benefit Prohibited

Although the data and discussion above demonstrating the negative default, claim, and other adverse effects of SFDPA are focused on nonprofit organizations, the rule, if implemented, would have broader application. It would prohibit a mortgagor's required cash investment from consisting, in whole or part, of funds provided by the seller, or any other person or entity that financially benefits from the transaction, or any third party or entity reimbursed by the seller or other person or entity that financially benefits from the transaction. HUD has determined that this broader prohibition is appropriate and justified, as discussed below.

HUD is not singling out nonprofit organizations in proposing to prohibit SFDPA because the same scheme of funneling or advancing funds for the seller, through an intermediary, to the homebuyer can be accomplished using any person or entity as the intermediary or using any number or layers of intermediaries. HUD's rule would apply to all such transactions. Whenever the funds for the homebuyer's required investment in the property are provided by a party that financially benefits from the sale of the property, the transaction is distorted by the provider's interest in inducing a purchase on any terms, in conflict with the borrower's and FHA's interest in achieving sustainable homeownership through a sustainable mortgage. This conflict is not abated when such funds are provided by an intermediary reimbursed by the party that financially benefits. It is present whether the seller provides the funds directly to the homebuyer or indirectly through an intermediary to the homebuyer.

Further, when the source of downpayment funds financially benefits from the transaction, the downpayment amount is likely to be added to the sales price to ensure that the funder's net benefit is not diminished. Any cost to the buyer added to the transaction adds to the long-term financial burden to the mortgagor and increases the loan amount insured by HUD, thereby increasing HUD's risk exposure in the event of an insurance claim.

While it is not certain that the downpayment funder's cost will be added dollar for dollar to the transaction in every instance, it would be an extreme administrative burden to HUD, if not an outright impossibility, to ensure that the addition of cost has not occurred. Even if the cost is not added to the sales price, and the property is sold for its appraised value, it may be deduced that the seller has refrained from accepting a lower price that would have otherwise been acceptable in an arms-length transaction. Therefore, the rule would prohibit downpayment assistance from any sources that financially benefit from the transaction in order to eliminate, not only the conflict of interest, but the potential for additional financial burden imposed upon the mortgagor and added insurance risk to HUD.

HUD considers it reasonable to conclude that the problems associated with SFDPA from nonprofit organizations would appear in connection with seller- (or other financial beneficiary-) funded downpayment assistance from any other sources. The potential for problems to arise is not related to the nature of the intermediary that serves as the conduit for the assistance but to the *quid pro quo* relationship between the funding of a downpayment and the funder's receipt of a financial benefit. Thus, for example, although the rule generally permits a gift from a family member to be used by the mortgagor to meet the minimum investment requirement, a payment from a family member who is reimbursed by the seller, or by another party that financially benefits from the transaction, would not be permitted by the rule. The same outcome would result if the payment to the mortgagor came from a nonprofit organization, a government agency, a tribal government, or any other intermediary; if the intermediary that serves as the conduit for the payment is reimbursed by the seller or other party that financially benefits, the payment would not be

permitted. A transaction-distorting conflict of interest with the potential for adding an above-market burden on the borrower and increased risk to the FHA fund is present in each such instance.

This rule would not disturb the programs of direct homeownership assistance that are administered by private, charitable organizations or state, local, and tribal governments that are not dependent upon payment or reimbursement of the assistance by a seller or other party that benefits financially from a transaction. Programs acceptable to HUD do not contain the conflict of interest inherent in programs and transactions in which downpayment assistance is linked to a payment or reimbursement by the seller or other entity that financially benefits from the transaction. For these reasons, HUD would continue to allow programs in which the downpayment assistance is not linked to a payment or reimbursement by the seller or other entity that benefits financially from the transaction.

V. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed the rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that the rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Environmental Review

A Finding of No Significant Impact was not required for the proposed rule. Under 24 CFR 50.19(b)(6), the rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*) and that categorical exclusion continues to apply.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The entities directly affected by this rule are FHA-approved ''direct endorsement'' (DE) lenders, i.e., mortgage lenders that are approved to underwrite and endorse their loans for FHA insurance, that must follow FHA requirements to have a loan insured by the FHA, and that are the party ''insured'' by FHA. While other types of entities may be indirectly affected by this rule, the RFA does not cover such indirect effects.

As a result of this rule, DE lenders would no longer be able to obtain FHA insurance for loans with seller-funded downpayment assistance. Therefore, the economic impact, if any, of the rule on regulated entities may be estimated by attempting to determine what proportion of DE lenders' loan volume will be affected by the rule (i.e., what proportion consists of FHA-insured loans with seller-funded downpayment assistance) and how much, if any, revenue and profit DE lenders would forgo as a result of FHA no longer being able to insure that particular category of loans.

A. Estimating the Number of Small Entities Potentially Affected

To determine if the rule would have a significant economic impact on a substantial number of small entities, HUD first identified the total number of DE lenders, large or small, with current FHA loan activity. According to HUD's records, there were 1,487 DE lenders that were actively underwriting FHA-insured loans in 2007. The next step in the analysis was to estimate how many of these 1,487 DE lenders would be considered ''small entities.'' Under the applicable industry classifications, banks and other depository institutions are considered ''small entities'' if they have $165 million or less in assets; non-bank mortgage lenders are considered ''small'' if they have $6.5 million or less in annual revenues.[22] To begin narrowing the field, HUD attempted to identify the subset of DE lenders whose annual revenue from FHA-insured loans was $6.5 million or less. This was done by multiplying the total dollar volume of FHA-insured loans made by a lender, information that HUD collects on an annual basis, by a factor of four percent, which represents a per-loan revenue estimate typically quoted by FHA lenders. Out of the original universe of 1,487, HUD identified 74 DE lenders whose estimated annual revenue from FHA-insured loans was $6.5 million or less. This number still overstates the number of DE lenders who actually meet the ''small entity test,'' because FHA-insured loans typically are not the only line of business or income stream for a DE lender. However, it serves the useful purpose of flagging the subset of DE lenders that potentially fall within the ''small entity'' definition and thus require further analysis.

The next step in the analysis was to ascertain how many of the 74 flagged DE lenders actually meet the applicable test for ''small entity.'' As noted above, the test is different depending on whether the entity is a bank or other depository institution, on the one hand, or a non-bank mortgage lender on the other. Sixty-two of the 74 flagged DE lenders were non-bank mortgage lenders; 12 were banks or other depository institutions. With respect to non-bank mortgage lenders, HUD has access to their annual audited financial statements, which they must submit to HUD on-line via the Lender Assessment Sub-System (LASS) in order to renew their FHA lender approval. Of the 62 flagged non-bank mortgage lenders, 36 reported annual revenue that would qualify them as ''small entities'' under the applicable less-than-$6.5 million-annual-revenue test.

As noted above, banks and other depository institutions are considered ''small entities'' if they have $165 million or less in assets. DE lenders that are banking institutions are not required to supply financial statements through HUD's LASS. From publicly available annual reports, however, HUD was able to ascertain that none of the 12 flagged banking institutions met this test. Thus, 36 of the 74 flagged DE lenders are small entities subject to this regulation.

B. Estimating the Number of Small Entities That Would Be Significantly Impacted by the Rule

The foregoing discussion demonstrated that there are 36 DE lenders that qualify as ''small entities'' under the applicable tests. The next step in the analysis is to determine whether the rule is likely to have a significant economic impact on a substantial number of these 36 small entities. In the RFA context, a 10 percent loss of profits is commonly used as a measure of significant impact. HUD does not have access to sufficient data to perform a 10 percent loss-of-profits analysis directly. However, HUD can approximate a 10 percent loss-of-profits analysis by determining whether a DE lender's total portfolio of FHA-insured loans consists of 10 percent or more loans with seller-funded downpayment assistance. This methodology is more conservative than a straightforward 10 percent loss-of-profits approach, since a 10 percent loss of FHA-insured loan business likely

[22] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes; avialable at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

represents a lesser percent of an entity's overall business. HUD is not aware of any FHA-approved lender whose business consists exclusively of FHA-insured loans; thus, even if a lender's FHA-insured loan volume fell by a margin of 10 percent or more, its overall profits from all segments of its business would not necessarily be affected by the same margin. Although HUD is unaware of any other institution, public or private, that will insure loans with seller-funded downpayment assistance, the regulation's impact could be further mitigated to the extent that other SFDPA-loan insurers exist.

Only five of the 36 identified small DE lenders had FY 2007 FHA-insured loan portfolios consisting of at least 10 percent loans with nonprofit downpayment assistance.[23] Therefore, the maximum number of small entities that might be significantly affected by the regulation is 5 out of a field of 36 small DE lenders. Most likely, not even all of these 5 will be significantly affected, because to the extent they have any revenue-generating activities other than FHA-insured loans, SFDPA FHA-insured loans may well comprise under 10 percent of the entity's total business even if they comprise more than 10 percent of the entity's FHA-insured loan business. In any event, even 5 economically impacted small entities is not in itself a substantial number; nor is it a substantial portion of the total number of small entities in the field.[24]

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612, Federalism

Executive Order 12612 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order. This rule solely addresses requirements under HUD's FHA mortgage insurance programs.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, approved March 22, 1995) established requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for the principal FHA single family mortgage insurance program is 14.117. This rule also applies through cross-referencing to FHA mortgage insurance for condominium units (14.133), and other smaller single family programs.

List of Subjects in 24 CFR Part 203

Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend 24 CFR part 203, as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z–16, and 1715u; 42 U.S.C. 3535(d).

2. Section 203.19 is revised to read as follows:

§ 203.19 Mortgagor's investment in the property.

(a) *Required funds.* The mortgagor must have available funds equal to the difference between:

(1) The cost of acquisition, which is the sum of the purchase price of the home and settlement costs acceptable to the Secretary; and

(2) The amount of the insured mortgage.

(b) *Mortgagor's minimum cash investment.* The required funds under paragraph (a) of this section must include an investment in the property by the mortgagor, in cash or cash equivalent, equal to at least 3 percent of the cost of acquisition, as determined by the Secretary, unless the mortgagor is:

(1) A veteran meeting the requirements of § 203.18(b); or

(2) A disaster victim meeting the requirements of § 203.18(e).

(c) *Restrictions on seller funding.* Notwithstanding paragraphs (e) and (f) of this section, the funds required by paragraph (a) of this section shall not consist, in whole or in part, of funds provided by any of the following parties before, during, or after closing of the property sale:

(1) The seller or any other person or entity that financially benefits from the transaction; or

(2) Any third party or entity that is reimbursed, directly or indirectly, by any of the parties described in paragraph (c)(1) of this section.

(d) *Gifts and loans usually prohibited for minimum cash investment.* A mortgagor may not use funds for any part of the minimum cash investment under paragraph (b) of this section if the funds were obtained through a loan or a gift from any person, except as provided in paragraphs (e) and (f) of this section, respectively.

(e) *Permissible sources of loans*—(1) *Statutory authorization needed.* A statute must authorize a loan as a source of the mortgagor's minimum cash investment under paragraph (b) of this section.

(2) *Examples.* The following loans are authorized by statute as a source for the minimum investment:

(i) A loan from a family member, a loan to a mortgagor who is at least 60 years old when the mortgage is accepted for insurance, or a loan that is otherwise expressly authorized by section 203(b)(9) of the National Housing Act;

(ii) A loan made or held by, or insured by, a federal, state, or local government agency or instrumentality under terms and conditions approved by the Secretary;

(iii) A loan made or held by, or insured by, a tribal government or an agency or instrumentality thereof, including a tribally designated housing entity as defined at 25 U.S.C. 4103(21), which is treated as a state or local government under applicable state or local law, under terms and conditions approved by the Secretary; and

(iv) A federal disaster relief loan.

(f) *Permissible sources of gifts.* The following are permissible sources of gifts or grants used for the mortgagor's minimum investment under paragraph (b) of this section:

(1) Family members and governmental agencies and

[23] Ninety-two percent of all loans with nonprofit downpayment assistance were made by 5 lenders that are not small entities.

[24] Moreover, when the total number of small entities in the whole relevant industry is considered, including mortgage lenders that are not approved to underwrite FHA loans and are therefore not affected by the regulation, the figure of five small entities that may be significantly impacted becomes even more insubstantial. Based on data provided in the preamble to a rule proposed earlier this year by the Board of Governors of the Federal Reserve System, of the 17,618 depository institutions reporting data to the Board, more than 10,000 were small mortgage lenders. See Truth in Lending: Proposed Rule, 73 FR 1671, 1719 (January 9, 2008). Including small, non-depository mortgage lenders would only increase that universe beyond 10,000.

instrumentalities eligible under paragraphs (e)(2)(i) and (ii) of this section;

(2) A tribal government or an agency or instrumentality thereof, including a tribally designated housing entity, as defined at 25 U.S.C. 4103(21);

(3) An employer or labor union of the mortgagor;

(4) Organizations described in section 501(c)(3) and exempt from taxation under section 501(a) of the Internal Revenue Code of 1986;

(5) Disaster relief grants; and

(6) Other sources as may be approved by the Secretary on a case-by-case basis.

Dated: June 10, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing, Federal Housing Commissioner.

Appendix—Tables

Note: This Appendix will not be codified in the Code of Federal Regulations.

TABLE 1.—FHA SINGLE-FAMILY PURCHASE LOAN ENDORSEMENTS, SHARES BY DOWNPAYMENT SOURCE TYPE AND FISCAL YEAR

Fiscal year	Source of downpayment funds in percent				
	Borrower	Family	Nonprofit	Govt agency	Employer
2000	75.75	20.28	1.74	2.14	0.09
2001	77.52	15.64	4.92	1.83	0.10
2002	74.95	13.75	9.18	2.04	0.09
2003	63.53	15.25	18.40	2.70	0.12
2004	53.97	15.59	27.19	3.12	0.12
2005	48.44	14.18	33.09	4.17	0.12
2006	48.73	12.93	32.78	5.43	0.13
2007	47.52	12.02	35.09	5.25	0.12
2008 [a]	46.05	12.25	37.30	4.32	0.09

[a] Data for five months, October through February.

Source: U.S. Department of Housing and Urban Development.

TABLE 2.—EARLY DEFAULT RATE COMPARISONS ON FHA-INSURED HOME PURCHASE LOANS BY SOURCE OF DOWNPAYMENT FUNDS AND FISCAL YEAR OF INSURANCE ENDORSEMENT

Fiscal year of insurance endorsement	Early default rates in percent					Ratios to "borrower" early default rates			
	Borrower	Family	Nonprofit	Govt agency	Employer	Family	Nonprofit	Govt agency	Employer
2000	3.89	5.26	7.98	6.76	4.37	1.36	2.05	1.74	1.12
2001	7.43	9.10	16.32	13.17	8.51	1.22	2.20	1.77	1.15
2002	6.99	8.56	15.22	12.62	11.93	1.23	2.18	1.81	1.71
2003	5.79	7.34	13.90	12.17	9.28	1.27	2.40	2.10	1.60
2004	5.84	7.79	14.33	12.36	10.42	1.33	2.46	2.12	1.78
2005	7.08	9.24	16.43	12.81	9.95	1.30	2.32	1.81	1.41
2000–2005	6.08	7.57	14.80	11.56	9.00	1.24	2.43	1.90	1.48

Source: HUD.

Notes: FHA-insured home-purchase loans; early default is defined as a 90-day (3 month) delinquency within the first 2 years of scheduled payments on the mortgage.

TABLE 3.—EVER-DEFAULTED RATE COMPARISONS ON FHA-INSURED HOME PURCHASE LOANS BY SOURCE OF DOWNPAYMENT FUNDS AND FISCAL YEAR OF INSURANCE ENDORSEMENT

Fiscal year of insurance endorsement	Ever-defaulted rates in percent					Ratios to "borrower" ever-defaulted rates			
	Borrower	Family	Nonprofit	Govt agency	Employer	Family	Nonprofit	Govt agency	Employer
2000	16.40	21.39	28.69	27.79	21.83	1.30	1.75	1.69	1.33
2001	15.28	18.36	28.38	28.40	19.70	1.20	1.86	1.86	1.29
2002	13.24	15.30	25.30	24.47	17.30	1.16	1.91	1.85	1.31
2003	11.86	14.26	25.05	23.68	17.53	1.20	2.11	2.00	1.48
2004	10.60	13.57	23.94	20.88	17.92	1.28	2.26	1.97	1.69
2005	10.75	13.80	23.28	18.46	15.40	1.28	2.16	1.72	1.43
2006	8.16	10.59	17.67	12.31	16.22	1.30	2.16	1.51	1.99
2007	4.13	5.26	9.90	5.70	4.22	1.27	2.40	1.38	1.02

Source: HUD; FHA-insured home-purchase loans; data as of February 29, 2008.

Notes: Default is defined as a 90-day (3 month) delinquency; ever-defaulted represents having had at least one default episode.

TABLE 4.—CURRENT DEFAULT RATE COMPARISONS ON FHA-INSURED HOME PURCHASE LOANS BY SOURCE OF DOWNPAYMENT FUNDS AND FISCAL YEAR OF INSURANCE ENDORSEMENT

Fiscal year of insurance endorsement	Current default rates in percent					Ratios to "borrower" current default rates			
	Borrower	Family	Nonprofit	Govt agency	Employer	Family	Nonprofit	Govt agency	Employer
2000	11.83	14.80	17.33	13.50	19.12	1.25	1.46	1.14	1.62
2001	10.69	12.75	19.51	13.65	21.69	1.19	1.82	1.28	2.03
2002	8.23	10.01	15.97	11.83	4.20	1.22	1.94	1.44	0.51
2003	5.63	6.92	11.64	9.26	8.18	1.23	2.07	1.65	1.45
2004	5.36	7.41	12.33	8.64	10.92	1.38	2.30	1.61	2.04
2005	5.55	7.43	12.64	8.76	9.43	1.34	2.28	1.58	1.70
2006	4.94	6.46	10.97	6.98	9.81	1.31	2.22	1.41	1.99
2007	2.86	3.78	7.47	3.92	3.05	1.32	2.61	1.37	1.07
All Years	6.22	7.68	11.19	8.07	9.02	1.24	1.80	1.30	1.45

Source: HUD.
Note: Data are as of February 29, 2008.

TABLE 5.—DATE CLAIM RATE COMPARISONS ON FHA-INSURED HOME PURCHASE LOANS BY SOURCE OF DOWNPAYMENT FUNDS AND FISCAL YEAR OF INSURANCE ENDORSEMENT

Fiscal year of insurance endorsement	To-date claim rates in percent					Ratios to "borrower" to-date claim rates			
	Borrower	Family	Nonprofit	Govt agency	Employer	Family	Nonprofit	Govt agency	Employer
2000	6.29	8.38	16.07	13.58	9.52	1.33	2.56	2.16	1.51
2001	5.67	6.68	16.23	13.34	7.24	1.18	2.86	2.35	1.28
2002	4.45	4.58	13.27	10.72	6.16	1.03	2.98	2.41	1.38
2003	3.31	3.58	11.22	8.84	4.57	1.08	3.39	2.67	1.38
2004	2.21	2.77	8.89	5.80	3.75	1.25	4.02	2.62	1.69
2005	1.61	1.88	6.29	3.81	2.61	1.17	3.91	2.36	1.62
2006	0.73	0.85	2.91	1.60	2.21	1.17	3.99	2.19	3.03
2007	0.08	0.09	0.41	0.17	0.00	1.12	5.07	2.14	0.00

Source: HUD; claims paid as of February 29, 2008.

TABLE 6.—EXPECTED LIFETIME CLAIM RATES ON RECENT FHA INSURANCE ENDORSEMENTS, BY CREDIT SCORE, LTV, AND NONPROFIT DOWNPAYMENT ASSISTANCE FIXED-RATE, 30-YEAR MORTGAGES

Credit score ranges	Loan-to-value ranges				Ratio of nonprofit to other above-95 percent claim rates
	Up to 90 percent	90.1–95 percent	Above 95 percent		
			Other downpayment funds	Nonprofit assisted	
FY 2005 Insurance Endorsements					
680–850	2.74	3.19	3.37	6.69	1.99
640–679	4.32	5.56	6.23	13.02	2.09
620–639	4.54	5.89	6.59	13.36	2.03
580–619	6.44	9.17	10.57	21.58	2.04
540–579	7.74	12.80	13.52	26.20	1.94
500–539	10.56	17.53	17.49	32.92	1.88
300–499	13.56	12.21	21.33	46.63	2.19
None	6.81	9.66	11.04	23.80	2.16
All	5.60	6.90	6.94	16.79	2.42
FY 2006 Insurance Endorsements					
680–850	2.05	3.07	3.80	9.13	2.40
640–679	4.04	6.92	8.73	19.25	2.21
620–639	3.93	7.22	9.20	20.00	2.17
580–619	6.14	12.24	15.21	31.81	2.09
540–579	7.41	15.53	19.00	37.34	1.97
500–539	10.56	19.54	25.03	46.67	1.86
300–499	16.11	27.04	34.47	59.09	1.71
None	7.91	12.89	16.21	37.02	2.28

TABLE 6.—EXPECTED LIFETIME CLAIM RATES ON RECENT FHA INSURANCE ENDORSEMENTS, BY CREDIT SCORE, LTV, AND NONPROFIT DOWNPAYMENT ASSISTANCE FIXED-RATE, 30-YEAR MORTGAGES—Continued

Credit score ranges	Loan-to-value ranges				Ratio of non-profit to other above-95 percent claim rates
	Up to 90 percent	90.1–95 percent	Above 95 percent		
			Other downpayment funds	Nonprofit assisted	
All	5.22	8.21	9.24	23.21	2.51
FY 2007 Insurance Endorsements					
680–850	2.14	3.75	4.9	11.54	2.36
640–679	4.45	8.10	11.15	23.78	2.13
620–639	4.43	8.68	11.54	24.57	2.13
580–619	7.43	14.28	19.47	38.49	1.98
540–579	8.71	18.71	24.01	45.03	1.88
500–539	10.51	22.73	30.86	53.80	1.74
300–499	16.09	33.68	40.82	68.31	1.67
None	9.21	15.73	21.14	42.85	2.03
All	6.05	10.01	12.25	28.49	2.33

Source: Special aggregations performed by Integrated Financial Engineering, Inc., from the FY 2007 actuarial study of the FHA Mutual Mortgage Insurance Fund (available at *http://www.hud.gov/offices/hsg/comp/rpts/actr/2007actr.cfm*). Lifetime claim rate predictions use base case economic forecasts provided by Global Insight, Inc.

TABLE 7.—MEDIAN INCOMES OF FHA PURCHASE BORROWERS IN FY 2007

Loan-to-value ratio	FICO score range								
	850–680	679–640	639–620	619–600	599–560	559–500	499–300	None	Row
LE 90	$43,404	$42,906	$43,290	$44,550	$48,180	$52,068	$49,200	$32,232	$44,688
91–95	47,388	49,338	49,800	51,420	53,724	54,984	55,170	37,440	49,920
96–97	49,512	52,506	53,208	54,996	55,068	55,500	52,824	39,000	51,996
SFDPA*	48,432	50,754	51,024	51,672	51,618	51,732	52,008	36,900	50,136
Column	48,756	51,372	51,936	52,752	53,004	53,388	51,996	37,440	50,760

* Loans with seller-funded downpayment assistance.

TABLE 8.—PURCHASE LOAN COMPOSITION IN FY 2007, BY LTV AND FICO SCORE

[In percent]

Loan-to-value ratio	FICO score range								
	850–680	679–640	639–620	619–600	599–560	559–500	499–300	None	LTV sum
LE 90	1.7	1.4	1.0	1.0	1.9	1.3	0.2	0.6	9.1
91–95	1.7	1.6	1.0	1.0	1.3	0.7	0.1	0.3	7.8
96–97	14.3	10.1	5.6	5.6	7.8	3.8	0.4	2.4	49.9
SFDPA*	5.0	5.5	4.1	4.1	7.4	4.8	0.6	1.6	33.2
FICO Sum	22.8	18.7	11.7	11.7	18.5	10.6	1.2	5.0	100.0

* Loans with seller-funded downpayment assistance.

TABLE 9.—EXPECTED CLAIM RATES FOR ALL FY 2009 LOANS BASED ON FY 2007 ACTUARIAL REVIEW AND RECENT ECONOMIC ASSUMPTIONS

[In percent]

Loan-to-value ratio	FICO score range							
	850–680	679–640	639–620	619–600	599–560	559–500	499–300	None
LE 90	2.2	4.7	4.5	7.7	8.7	10.2	15.3	9.6
91–95	3.1	6.7	7.0	11.6	14.6	18.3	26.0	13.4
96–97	3.9	8.9	9.3	15.5	19.0	25.3	36.2	17.7
SFDPA*	8.9	18.6	19.4	31.7	36.8	47.0	61.4	34.7

* Loans with seller-funded downpayment assistance.

TABLE 10.—CREDIT SUBSIDY RATES BY LTV AND FICO SCORE

[In percent]

Loan-to-value ratio	FICO score range							
	850–680	679–640	639–620	619–600	599–560	559–500	499–300	None
LE 90	−2.95	−1.89	−2.00	−0.69	−0.54	−0.01	2.41	0.10
90–95	−2.56	−1.08	−0.94	0.90	1.26	2.62	6.70	1.65
95–97	−2.22	−0.18	−0.04	2.49	2.88	4.80	10.74	3.37
SFDPA*	−0.20	3.73	4.07	8.97	9.57	12.63	20.41	10.12

*Loans with seller-funded downpayment assistance.

TABLE 11.—BREAKEVEN UP-FRONT AND ANNUAL INSURANCE PREMIUMS FOR SELLER-FUNDED DOWNPAYMENT ASSISTANCE LOANS

[In percent]

	FICO score range							
	850–680	679–640	639–620	619–600	599–560	559–500	499–300	None
Up-front Premium	0.95	5.56	5.99	5.92	6.88	12.09	28.95	7.77
Annual Premium	0.55	0.55	0.55	2.00	2.00	2.00	2.00	2.00

[FR Doc. 08–1356 Filed 6–11–08; 2:56 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Docket No. USMS 102; AG Order No. 2974–2008]

RIN 1105–AB14

Revision to United States Marshals Service Fees for Services

AGENCY: United States Marshals Service, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to increase the fee from $45 per person per hour to $55 per person per hour for process served or executed personally by a United States Marshals Service employee, agent, or contractor. This proposed fee increase reflects the current costs to the United States Marshals Service for service of process in federal court proceedings.

DATES: Written comments must be submitted on or before August 15, 2008.

ADDRESSES: Please submit written comments to the Office of General Counsel, United States Marshals Service, Washington, DC 20530–1000. To ensure proper handling, please reference Docket No. USMS 102 on your correspondence.

Comments may also be submitted electronically to: *usmsregs@usdoj.gov* or to *http://www.regulations.gov* by using the electronic comment form provided on that site. Comments submitted electronically must include Docket No. USMS 102 in the subject box. You may also view an electronic version of this rule at the *http://www.regulations.gov* site.

Comments are also available for public inspection at the Office of General Counsel by calling (202) 307–9054 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Joe Lazar, Associate General Counsel, United States Marshals Service, Washington, DC 20530–1000, telephone number (202) 307–9054.

SUPPLEMENTARY INFORMATION:

Legal Authority for the U.S. Marshals Service To Charge Fees

The Attorney General must establish fees to be taxed and collected for certain services rendered by the U.S. Marshals Service in connection with federal court proceedings. 28 U.S.C. 1921(b). These services include, but are not limited to, serving writs, subpoenas, or summonses, preparing notices or bills of sale, keeping attached property, and certain necessary travel. 28 U.S.C. 1921(a). To the extent practicable, these fees shall reflect the actual and reasonable costs of the services provided. 28 U.S.C. 1921(b).

The Attorney General initially established the fee schedule in 1991 based on the actual costs, e.g., salaries, overhead, etc., of the services rendered and the hours expended at that time. 56 FR 2436 (Jan. 23, 1991). Due to an increase in the salaries and benefits of U.S. Marshals Service personnel over time, the initial fee schedule was amended in 2000. 65 FR 47859 (Aug. 4, 2000). The current fee schedule is inadequate and no longer reflects the actual and reasonable costs of the services rendered.

Federal Cost Accounting and Fee Setting Standards and Guidelines Being Used

When developing fees for services, the U.S. Marshals Service adheres to the principles contained in Office of Management and Budget Circular No. A–25 Revised (''Circular No. A–25''). Circular No. A–25 states that, as a general policy, a ''user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.'' *Id.* § 6.

The U.S. Marshals Service follows the guidance contained in Circular No. A–25 to the extent that it is not inconsistent with any federal statute. Specific legislative authority to charge fees for services takes precedence over Circular No. A–25 when the statute ''prohibits the assessment of a user charge on a service or addresses an aspect of the user charge (e.g., who pays the charge; how much is the charge; where collections are deposited).'' *Id.* § 4(b). When a statute does not address issues of how to calculate fees or what costs to include in fee calculations, Circular No. A–25 instructs that its principles and guidance should be followed ''to the extent permitted by law.'' *Id.* According to Circular No. A–25, federal agencies should charge the full cost or the market price of providing services that provide a special benefit to identifiable recipients. *Id.* § 6. Circular No. A–25 defines full cost as including ''all direct and indirect costs to any part of the Federal Government of providing

a good, resource, or service. These costs include, but are not limited to, an appropriate share of'':

- Direct or indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;
- Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;
- The management and supervisory costs; and
- The costs of enforcement, collection, research, establishment of standards, and regulation. *Id.* § 6(d).

Processes Used To Determine the Amount of the Fee Revision

The Attorney General initially established the fee schedule in 1991 based on the average salaries, benefits, and overhead of the Deputy U.S. Marshals who executed process on behalf of a requesting party. The fee schedule was revised in 2000. The 2000 rates, which still currently are charged are:

(1) For process forwarded for service from one U.S Marshals Service office or suboffice to another—$8 per item forwarded;

(2) For process served by mail—$8 per item mailed;

(3) For process served or executed personally—$45 per hour (or portion thereof) for each item served by one U.S. Marshals Service employee, agent, or contractor, plus travel costs and any other out-of-pocket expenses. For each additional U.S. Marshals Service employee, agent, or contractor who is needed to serve process—$45 per person per hour for each item served, plus travel costs and any other out-of-pocket expenses.

(4) For copies at the request of any party—$.10 per page;

(5) For preparing notice of sale, bill of sale, or U.S. Marshal deed—$20 per item;

(6) For keeping and advertisement of property attached—actual expenses incurred in seizing, maintaining, and disposing of the property.

In 2007, the U.S. Marshals Service conducted an analysis to determine whether, in light of the increase in salaries and expenses of its workforce over the previous seven-year time period, the existing fee schedule continued to reflect the costs of serving process. The following cost module was designed to reflect the average hourly cost of serving process in person on behalf of a requesting party.

	Cost module
Hourly Wage	$33.00
Fringe Benefits	14.18
Indirect Costs	10.28
Total Personnel Costs	57.46

The hourly wage was determined by dividing the annual salary, including locality pay, of the average Deputy U.S. Marshal in 2007 who served process into the Deputy's total work hours for the year. The cost of Law Enforcement Availability Pay also was factored into the hourly wage of an average Deputy U.S. Marshal.[1] The fringe benefits rate reflected 43 percent of wage costs. Finally, the indirect costs, which reflected the costs of administrative services, including management/supervisory compensation and benefits, depreciation, utilities, supplies, and equipment, comprised approximately 22 percent of the total wage and benefits costs. As a result of the cost module, the U.S. Marshals Service determined that the existing fee schedule no longer reflected the actual and reasonable costs of serving process.

The total personnel costs of serving process were rounded to the nearest five-dollar increment. Thus, in order to recover the actual and reasonable costs of serving process, the U.S. Marshals Service is proposing to charge $55 per hour (or portion thereof) for each item served by one Deputy U.S. Marshal. This represents a 20 percent increase ($10 per hour) from the existing fee for serving process revised in 2000.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Under the current fee structure, the U.S. Marshals Service collected $1,610,552.72 in service of process fees in FY 2007.[2] The implementation of this proposed rule will provide the U.S. Marshals Service with an estimated additional $325,000 in revenue over the revenue that would be collected under the current fee structure. This revenue increase represents a recovery of costs based on an increase in salaries, expenses, and employee benefits over the previous seven-year period.

The economic impact on individual entities that utilize the services of the U.S. Marshals Service will be minimal. The service of process fees only will affect entities that pursue litigation in federal court and, in most instances, seek to have the U.S. Marshals levy upon or seize property. The service of process fees will be increased by only $10 per hour from the previous rate increase seven years ago. The fees will be consonant with similar fees already paid by these entities in state court litigation.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866 (Regulatory Planning and Review), section 1(b) (Principles of Regulation). The Department of Justice has determined that this proposed rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), and, accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This proposed rule will not have substantial direct effects on the States, on the relationship between the national

[1] The Law Enforcement Availability Pay Act of 1994, Pub. L. No. 103–329, § 633, 108 Stat. 2425 (1994) (codified at 5 U.S.C. 5545a), provides that law enforcement officers, such as Deputy U.S. Marshals, who are required to work unscheduled hours in excess of each regular work day, are entitled to a 25% premium pay in addition to their base salary.

[2] This amount does not include $534,518 in U.S. Marshal commissions collected and the recovery of out-of-pocket expenses for sales during FY 2007. This proposed rule does not affect commissions, only the fees charged for service of process.

government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 concerning civil justice reform.

Paperwork Reduction Act of 1995

This proposed rule does not contain collection of information requirements and would not be subject to the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501–20).

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, Title 28, Part 0, Subpart T of the Code of Federal Regulations is proposed to be amended as follows:

PART 0—[AMENDED]

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

§ 0.114 [Amended]

2. In § 0.114, paragraph (a)(3) is amended by removing the fee ''$45'' and adding the fee ''$55'' in its place wherever it occurs.

Dated: June 5, 2008.

Michael B. Mukasey,

Attorney General.

[FR Doc. E8–13437 Filed 6–13–08; 8:45 am]

BILLING CODE 4410–04–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

[BOP–1088–P]

RIN 1120–AB20

Psychiatric Evaluation and Treatment

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to revise its regulations on providing psychiatric treatment and medication to inmates. We propose these revised regulations to clarify and update the regulations in light of more recent caselaw.

DATES: Comments are due by August 15, 2008.

ADDRESSES: Our e-mail address is *BOPRULES@BOP.GOV.* Comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this regulation at *http://www.regulations.gov.* You may also comment via the Internet to BOP at *BOPRULES@BOP.GOV* or by using the *www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau proposes to revise its regulations on providing psychiatric treatment and medication to inmates. We published a proposed regulation document on this subject in the **Federal Register** on December 29, 2003 (68 FR 74892). We now withdraw that proposed regulation document and propose these revised regulations.

First, we rename the subpart ''Psychiatric Evaluation and Treatment'' to more accurately reflect the substance of the regulations. The previous title, ''Administrative Safeguards for Psychiatric Treatment and Medication,'' did not reflect the Bureau's ability to conduct psychiatric evaluations before involuntary hospitalization in a suitable facility for care and treatment.

Below, we provide a section-by-section analysis of the proposed regulations.

Section 549.40 Purpose and scope. This section states that the purpose of the subpart is to describe procedures for voluntary and involuntary psychiatric evaluation, hospitalization, care, and treatment, in a suitable facility for persons in Bureau custody. These procedures are authorized by 18 U.S.C. Chapter 313 and 18 U.S.C. 4042.

Current 28 CFR 549.43 refers to Title 18 U.S.C. 4241–4247, which comprised Chapter 313. The Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109–248) (Walsh Act), enacted on July 27, 2006, amended title 18 of the United States Code, Chapter 313, to add a new section 4248, related to sexual offenders. We therefore refer now to 18 U.S.C. Chapter 313 as a whole, instead of referring to specific sections of the statute.

This section also notes that this subpart applies to inmates in Bureau custody as defined by 28 CFR part 500, specifically § 500.1(c), which defines inmates as ''all persons in the custody of the Federal Bureau of Prisons or Bureau contract facilities, including persons charged with or convicted of offenses against the United States; D.C. Code felony offenders; and persons held as witnesses, detainees, or otherwise.''

Section 549.41 Hospitalization in a suitable facility. This section explains that, as used in 18 U.S.C. Chapter 313 and this subpart, ''hospitalization in a suitable facility'' includes the Bureau's designation of inmates to medical referral centers or correctional institutions which provide the required care or treatment.

Section 549.42 Use of psychiatric medications. This section describes how psychiatric medications will be used. Psychiatric medications will only be used for treatment of diagnosable mental illnesses and disorders, and their symptoms, for which such medication is accepted treatment, and that psychiatric medication will be administered only after following the applicable procedures in this subpart. This section is derived from current § 549.40.

In this regulation, we clarify that psychiatric medication is to be used only for a diagnosable psychiatric disorder or symptoms for which such medication is accepted treatment. Previously, the regulation allowed medication for ''symptomatic behavior.'' The word ''symptoms'' is more accurate medical terminology.

Section 549.43 Transfer for psychiatric or psychological examination. This section describes the Bureau's transfer authority. Pursuant to 18 U.S.C. Chapter 229, Subchapter C (§ 3621(b)), the Bureau is authorized to transfer inmates between facilities. Accordingly, the Bureau may transfer an inmate to a suitable facility for psychiatric or psychological examination to determine whether hospitalization in a suitable facility for psychiatric care or treatment is needed.

Section 549.44 Voluntary hospitalization in a suitable facility for psychiatric care or treatment, and voluntary administration of psychiatric medication. This section derives from current § 549.41. In this section, we state that an inmate may be hospitalized in a suitable facility for psychiatric care or treatment after providing informed and voluntary consent when, in the professional medical judgment of qualified health services staff, such care or treatment is required and prescribed.

This section is revised to more closely conform with the language of 18 U.S.C. Chapter 313. We change the words ''psychiatric treatment and medication'' to ''psychiatric hospitalization and treatment.'' We also clarify that inmates may be voluntarily admitted for psychiatric hospitalization and treatment when determined necessary by qualified health services staff.

As current § 549.41 provides, this section likewise provides that an inmate may provide informed and voluntary consent to the administration of psychiatric medication which complies with the requirements of this subpart.

This section also more thoroughly describes voluntary consent, explaining that the inmate's ability to provide informed and voluntary consent, both for hospitalization and for administration of psychiatric medications, will be assessed by qualified health services staff and documented in the inmate's medical record.

Section 549.45 Involuntary hospitalization in a suitable facility for psychiatric care or treatment. This section derives from current § 549.42. Current § 549.42 describes procedures for involuntary admission of sentenced inmates, but does not describe procedures for unsentenced inmates.

In this section, we state that a court determination is necessary for involuntary hospitalization or commitment of inmates pursuant to 18 U.S.C. Chapter 313, who are in need of psychiatric care or treatment, but are unwilling or unable to voluntarily consent. Section 4245 in that chapter specifically provides for involuntary hospitalization by court order of a person serving a sentence of imprisonment if needed for psychiatric care or treatment.

This section also describes due process procedures for involuntary hospitalization of inmates who are not subject to hospitalization under 18 U.S.C. 4245 (because not serving a sentence of imprisonment), such as alien detainees subject to an order of deportation, exclusion or removal, material witnesses, contempt of court commitments, etc.

If an examiner determines pursuant to § 549.43 of this subpart that such an inmate should be hospitalized for psychiatric care or treatment, and the inmate is unwilling or unable to consent, the Bureau will provide the inmate with an administrative hearing to determine whether hospitalization for psychiatric care or treatment is warranted. The hearing will comply with the applicable procedural safeguards set forth in § 549.46(a). However, the availability of this administrative hearing procedure in appropriate cases does not limit the Bureau's ability to seek judicial hospitalization or commitment of inmates under any applicable provision of Chapter 313, such as judicial commitment of inmates, whether sentenced or unsentenced, as sexually dangerous persons under 18 U.S.C. 4248.

Finally, this regulation states that, following an inmate's involuntary hospitalization for psychiatric care or treatment as provided in this subsection, psychiatric medication may be involuntarily administered only after following the additional administrative procedures provided in § 549.46 of this subpart.

Section 549.46 Procedures for involuntary administration of psychiatric medication. This section derives from current § 549.43.

Subsection (a) states that when an inmate is unwilling or unable to provide voluntary written informed consent for recommended psychiatric medication, the inmate will be scheduled for an administrative hearing, which will provide procedural safeguards as listed in current § 549.43. These safeguards appear almost verbatim in the proposed regulation, with some exceptions:

In subsection (a)(7), we remove ''unable to function in the open population of a mental health referral center or a regular prison'' as a separate basis to justify involuntary administration of medication. Under the proposed regulations, this reason may still justify involuntary psychiatric medication when otherwise part of an inmate's grave disability. *See, e.g.*, *U.S.* v. *Gonzalez-Aguilar,* 446 F.Supp. 2d 1099 (D.Ariz. 2006); *U.S.* v. *White,* 431 F.3d 431 (5th Cir. 2005).

Also in subsection (a)(7), we delete language that allowed the psychiatrist conducting an administrative hearing to determine whether medication is necessary to make an inmate competent to stand trial. This revision stems from the Supreme Court decision in *Sell* v. *U.S.,* 539 U.S. 166, 123 S.Ct. 2174 (2003). Under the *Sell* decision, where involuntary treatment is considered solely for the purpose of rendering the defendant competent to stand trial, only the trial court may order involuntary medication after applying the standards set forth by the *Sell* Court. This is reflected in subsection (b).

In subsection (a)(11), we state that if an inmate was afforded an administrative hearing which resulted in the involuntary administration of psychiatric medication, and the inmate subsequently consented to the administration of such medication, and then later revokes his consent, a follow-up hearing will be held before resuming the involuntary administration of psychiatric medication. All such follow-up hearings will fully comply with the procedures otherwise outlined in subsection (a). This will ensure that the inmate receives administrative process whenever psychiatric medication is given involuntarily, regardless of whether the inmate received such medication voluntarily in the past.

Subsection (b) restates exceptions found in current § 549.43(b) and (c) to the above procedural safeguards. The Bureau may involuntarily administer psychiatric medication to inmates, without following the procedures outlined above, in psychiatric emergencies and in the case of a court order for the purpose of restoring a person's competency to stand trial. Subsection (b)(2) states that, absent a psychiatric emergency as defined in (b)(1), the involuntary medication procedures in (a) do not apply to the involuntary administration of psychiatric medication for the sole purpose of restoring a person's competency to stand trial. Only a federal court of competent jurisdiction may order the involuntary administration of psychiatric medication for the sole purpose of restoring a person's competency to stand trial.

Current § 549.43(c) states that procedures in this section do not apply to military prisoners, unsentenced Immigration and Naturalization detainees, unsentenced prisoners in Bureau custody, and District of Columbia Code offenders. We delete this language for the following reasons:

First, proposed § 549.45(b) provides procedures for inmates in Bureau custody who are not otherwise subject to hospitalization pursuant to 18 U.S.C. Chapter 313. We do not, therefore, need to have an exception to the procedural safeguards for unsentenced immigration detainees or other unsentenced inmates in Bureau custody.

Secondly, 18 U.S.C. Chapter 313 and various Federal court decisions required certain due process procedures before involuntary hospitalization or involuntary psychiatric treatment. Under former 18 U.S.C. 4247(j), these due process procedures did not apply to military prisoners or DC Code violators.

However, new 10 U.S.C. 876b provides that military prisoners who are incompetent to stand trial or who have been found not guilty by reason of lack of mental responsibility may be committed to the custody of the Attorney General and that the

procedures authorized under 18 U.S.C. 4241(d), 4246, and 4243 apply. Likewise, under new 18 U.S.C. 4247(j), DC Code violators are subject to commitment procedures specified at 18 U.S.C. 4245 and 4246. Accordingly, we revise the list of exceptions in 28 CFR 549.43(c) to remove the reference to military prisoners and D.C. Code felony offenders.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', section 1(b), Principles of Regulation. The Director has determined that this regulation is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this regulation has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This regulation is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 549

Prisoners.

Harley G. Lappin,
Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR part 549 as follows.

PART 549—MEDICAL SERVICES

1. Revise the authority citation for 28 CFR part 549 to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 876b; 18 U.S.C. 3621, 3622, 3524, 4001, 4005, 4042, 4045, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), Chapter 313, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Revise subpart C of part 549 to read as follows:

Subpart C—Psychiatric Evaluation and Treatment

Sec.
549.40 Purpose and scope.
549.41 Hospitalization in a suitable facility.
549.42 Use of psychiatric medications.
549.43 Transfer for psychiatric or psychological examination.
549.44 Voluntary hospitalization in a suitable facility for psychiatric care or treatment and voluntary administration of psychiatric medication.
549.45 Involuntary hospitalization in a suitable facility for psychiatric care or treatment.
549.46 Procedures for involuntary administration of psychiatric medication.

Subpart C—Psychiatric Evaluation and Treatment

§ 549.40 Purpose and scope.

(a) This subpart describes procedures for voluntary and involuntary psychiatric evaluation, hospitalization, care, and treatment, in a suitable facility, for persons in Bureau of Prisons (Bureau) custody. These procedures are authorized by 18 U.S.C. Chapter 313 and 18 U.S.C. 4042.

(b) This subpart applies to *inmates* in Bureau custody, as that term is defined in 28 CFR part 500.

§ 549.41 Hospitalization in a suitable facility.

As used in 18 U.S.C. Chapter 313 and this subpart, ''hospitalization in a suitable facility'' includes the Bureau's designation of inmates to medical referral centers or correctional institutions which provide the required care or treatment.

§ 549.42 Use of psychiatric medications.

Psychiatric medications will be used only for treatment of diagnosable mental illnesses and disorders, and their symptoms, for which such medication is accepted treatment. Psychiatric medication will be administered only after following the applicable procedures in this subpart.

§ 549.43 Transfer for psychiatric or psychological examination.

The Bureau may transfer an inmate to a suitable facility for psychiatric or psychological examination to determine whether hospitalization in a suitable facility for psychiatric care or treatment is needed.

§ 549.44 Voluntary hospitalization in a suitable facility for psychiatric care or treatment, and voluntary administration of psychiatric medication.

(a) *Hospitalization.* An inmate may be hospitalized in a suitable facility for psychiatric care or treatment after providing informed and voluntary consent when, in the professional medical judgment of qualified health services staff, such care or treatment is required and prescribed.

(b) *Psychiatric medication.* An inmate may also provide informed and voluntary consent to the administration of psychiatric medication which complies with the requirements of § 549.42 of this subpart.

(c) *Voluntary consent.* An inmate's ability to provide informed and voluntary consent for both hospitalization in a suitable facility for psychiatric care or treatment, and administration of psychiatric medications, will be assessed by qualified health services staff and documented in the inmate's medical record. Additionally, the inmate must sign a consent form to accept hospitalization in a suitable facility for psychiatric care or treatment and the administration of psychiatric medications. These forms will be maintained in the inmate's medical record.

§ 549.45 Involuntary hospitalization in a suitable facility for psychiatric care or treatment.

(a) *Hospitalization of inmates pursuant to 18 U.S.C. Chapter 313.* A court determination is necessary for involuntary hospitalization or commitment of inmates pursuant to 18 U.S.C. Chapter 313, who are in need of psychiatric care or treatment, but are unwilling or unable to voluntarily consent.

(b) *Hospitalization of inmates not subject to hospitalization pursuant to 18 U.S.C. Chapter 313.* Pursuant to 18 U.S.C. 4042, the Bureau is authorized to provide for the safekeeping, care, and subsistence, of all persons charged with offenses against the United States, or held as witnesses or otherwise. Accordingly, if an examiner determines pursuant to § 549.43 of this subpart that an inmate not subject to hospitalization pursuant to 18 U.S.C. Chapter 313 should be hospitalized for psychiatric care or treatment, and the inmate is unwilling or unable to consent, the Bureau will provide the inmate with an administrative hearing to determine whether hospitalization for psychiatric care or treatment is warranted. The hearing will comply with the applicable procedural safeguards set forth in § 549.46(a).

(c) *Psychiatric medication.* Following an inmate's involuntary hospitalization for psychiatric care or treatment as provided in this section, psychiatric medication may be involuntarily administered only after following the administrative procedures provided in § 549.46 of this subpart.

§ 549.46 Procedures for involuntary administration of psychiatric medication.

Except as provided in paragraph (b) of this section, the Bureau will follow the administrative procedures of paragraph (a) of this section before involuntarily administering psychiatric medication to any inmate.

(a) Procedures. When an inmate is unwilling or unable to provide voluntary written informed consent for recommended psychiatric medication, the inmate will be scheduled for an administrative hearing. The hearing will provide the following procedural safeguards:

(1) Unless an exception exists as provided in paragraph (b) of this section, the inmate will not be involuntarily administered psychiatric medication before the hearing.

(2) The inmate must be provided 24-hours advance written notice of the date, time, place, and purpose, of the hearing, including an explanation of the reasons for the psychiatric medication proposal.

(3) The inmate must be informed of the right to appear at the hearing, to present evidence, to have a staff representative, to request witnesses, and to request that witnesses be questioned by the staff representative or by the person conducting the hearing. If the inmate does not request a staff representative, or requests a staff representative with insufficient experience or education, or one who is not reasonably available, the institution mental health division administrator must appoint a qualified staff representative.

(4) The hearing is to be conducted by a psychiatrist other than the attending psychiatrist, and who is not currently involved in the diagnosis or treatment of the inmate.

(5) Witnesses should be called if they are reasonably available and have information relevant to the inmate's mental condition or need for psychiatric medication. Witnesses who will provide only repetitive information need not be called.

(6) A treating/evaluating psychiatrist/clinician, who has reviewed the case, must be present at the hearing and must present clinical data and background information relative to the inmate's need for psychiatric medication. Members of the treating/evaluating team may also be called as witnesses at the hearing to provide relevant information.

(7) The psychiatrist conducting the hearing must determine whether involuntary administration of psychiatric medication is necessary because, as a result of the mental illness or disorder, the inmate is dangerous to self or others, poses a serious threat of damage to property affecting the security or orderly running of the institution, or is gravely disabled (manifested by extreme deterioration in personal functioning).

(8) The psychiatrist must prepare a written report regarding the initial decision. The inmate must be promptly provided a copy of the initial decision report, and informed that he/she may appeal it to the institution's mental health division administrator. The inmate's appeal, which may be handwritten, must be submitted within 24 hours after receipt of the hearing officer's report. Upon request of the inmate, the staff representative will assist the inmate in preparing and submitting the appeal.

(9) If the inmate appeals the initial decision, psychiatric medication must not be administered before the administrator issues a decision on the appeal, unless an exception exists as provided in paragraph (b) of this section. The inmate's appeal will ordinarily be reviewed by the administrator or his designee within 24 hours of its submission. The administrator will review the initial decision and ensure that the inmate received all necessary procedural protections, and that the justification for administering psychiatric medication is appropriate.

(10) A psychiatrist, other than the attending psychiatrist, must provide follow-up monitoring of the patient's treatment or medication at least once every 30 days after the initial decision. The follow-up must be documented in the medical record.

(11) If an inmate was afforded an administrative hearing which resulted in the involuntary administration of psychiatric medication, and the inmate subsequently consented to the administration of such medication, and then later revokes his consent, a follow-up hearing will be held before resuming the involuntary administration of psychiatric medication. All such follow-up hearings will fully comply with the procedures outlined in paragraphs (a)(1) through (10) of this section.

(b) *Exceptions.* The Bureau may involuntarily administer psychiatric medication to inmates in the following circumstances without following the procedures outlined in paragraph (a) of this section:

(1) *Psychiatric emergencies.* (i) During a psychiatric emergency, psychiatric medication may be administered only when the medication constitutes an appropriate treatment for the mental illness or disorder and its symptoms, and alternatives (e.g., seclusion or physical restraint) are not available or indicated, or would not be effective. If psychiatric medication is still recommended after the psychiatric emergency, and the emergency criteria no longer exist, it may only be administered after following the procedures in §§ 549.44 or 549.46 of this subpart.

(ii) For purposes of this subpart, a psychiatric emergency exists when a person suffering from a mental illness or disorder creates an immediate threat of:

(A) Bodily harm to self or others;

(B) Serious destruction of property affecting the security or orderly running of the institution; or

(C) Extreme deterioration in personal functioning secondary to the mental illness or disorder.

(2) *Court orders for the purpose of restoring competency to stand trial.* Absent a psychiatric emergency as defined above, § 549.46(a) of this subpart does not apply to the

involuntary administration of psychiatric medication for the sole purpose of restoring a person's competency to stand trial. Only a federal court of competent jurisdiction may order the involuntary administration of psychiatric medication for the sole purpose of restoring a person's competency to stand trial.

[FR Doc. E8–13261 Filed 6–13–08; 8:45 am]
BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–0386]

RIN 1625–AA08

Marine Events Regattas; Annual Marine Events in the Eighth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to update the list of marine events and regattas that take place in the Eighth Coast Guard District and to change patrol requirements for these events. This update is needed to provide effective control over regattas and marine events to insure safety of life in each regatta or marine event area.

DATES: Comments and related material must reach the Coast Guard on or before August 15, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0386 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule call CDR John Arenstam, Eighth Coast Guard District Prevention Division, (504) 671–2109 or e-mail, *John.J.Arenstam@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking USCG–2008–0386, indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0386) in the Search box, and click ''Go >>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Eighth Coast Guard District (dpw), Hale Boggs Federal Building, 500 Poydras Street, Room 1230, New Orleans, LA 70130, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

33 CFR part 100 provides regulations to provide effective control over regattas and marine parades conducted on U.S. navigable waters to insure safety of life in the regattas or marine parade area. Section 100.801 regulates events that take place in the Eighth Coast Guard District. This section needs to be updated because the Coast Guard has reorganized Coast Guard Group Offices and Marine Safety Offices into Coast Guard Sector Commands and the events listed in Table 1 of § 100.801 need to be revised to reflect current events.

The Coast Guard also proposes to modify Coast Guard patrol requirements for Eighth Coast Guard regattas and marine parades. Section 100.801(a) requires the Coast Guard to patrol marine events in the Eighth Coast Guard District. The Coast Guard feels that not all events require Coast Guard patrols and therefore proposes to leave this at the discretion of the local Coast Guard Captain of the Port.

Discussion of Proposed Rule

This proposed rule would update § 100.801 Table 1 and list regattas and marine parades in the Eighth Coast Guard District by Coast Guard Sector Commands vice Coast Guard Groups Offices. It would also change § 100.801(a) to allow the local Coast Guard Captain of the Port to establish Coast Guard patrol requirements.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The proposed regattas and marine parades listed in this rule will restrict vessel traffic from transiting certain areas of Eighth Coast Guard District waters; however the effect of this regulation will not be significant because these events are short duration and the special local regulation governing vessel movements and restrictions are also short duration. Additionally, the public is given advance notification through the **Federal Register** and thus will be able to plan operations around the event in advance.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit the regulated area during the regattas or marine parade.

The special local regulations would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for short periods of times and vessel traffic could pass safely around the regulated area or through the regulated area with permission of the patrol commander. And before the effective period, the Coast Guard Captain of the Port would issue maritime advisories widely available to users of the river.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CDR John Arenstam, Eighth Coast Guard District (dpw), 500 Poydras Street, New Orleans, LA 70003, (504) 671–2109, e-mail *John.J.Arenstam@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. This rule carries out maritime safety and is not likely to have any significant effects on public health and the environment. We have also concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact form this proposed rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Amend § 100.801 by revising paragraph (a) and table 1 to read as follows:

§ 100.801 Annual Marine Events in the Eighth Coast Guard District.

* * * * *

(a) The Coast Guard may patrol the event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.''

* * * * *

Table 1 of § 100.801—Eighth Coast Guard District Table Of Annual Marine Events

I. Sector Ohio Valley

1. WEBN/Riverfest Fireworks

Sponsor: WEBN.
Date: 1 Day—Sunday before Labor Day.
Regulated Area: Ohio River 469.2–470.5, Cincinnati, OH.

2. Aurora Thunder Regatta

Sponsor: Aurora Riverfront Beautification Committee.
Date: Last weekend in August.
Regulated Area: Ohio River, at approximately mile 496.0–499.0, mid-channel, Aurora, IN.

3. Ohio River Way Paddlefest

Sponsor: Ohio River Way (Paddlefest).
Date: Last weekend in June.
Regulated Area: Ohio River Miles 461.5—470.5, Cincinnati, OH.

4. Thunder Over Louisville.

Sponsor: Thunder Over Louisville.
Date: 5 Days—2nd half of April.
Regulated Area: Ohio River miles 602.0–606.0, Louisville, KY.

5. Kentucky Derby Festival Great Steamboat Race

Sponsor: Kentucky Derby Festival/Belle of Louisville Operating Board.
Date: 1 Day—Last Week in April or First Week in May.
Regulated Area: Ohio River 596.0–604.3, Louisville, KY.

6. Thunder on the Ohio

Sponsor: Evansville Freedom Festival.
Date: 6 Days—Last Week in June and First Week in July.
Regulated Area: Ohio River miles 791.0–795.0, Evansville, IN.

7. Indiana Governor's Cup

Sponsor: Madison Regatta Inc.
Date: 4 Days—1st Weekend in July.
Regulated Area: Ohio River miles 555.0–560.0, Madison, IN.

8. Kentucky Drag Boat Association Inc.: Drag Boat Races

Sponsor: Kentucky Drag Boat Association Inc.
Date: 3 Days—2nd half of August.
Regulated Area: Green River miles 70.0–71.5, Livermore, KY.

9. Ducks on the Ohio

Sponsor: Goodwill Industries, Inc.
Date: 1 Day—2nd half of August or September.
Regulated Area: Ohio River miles 791.5–793.5, Evansville, IN.

10. Clarksville Riverfest—Wakeboard Contest, Regatta, Fireworks

Sponsor: City of Clarksville, TN.
Date: 2nd Weekend in September.
Regulated Area: Mile Marker 125–126 Cumberland River.

11. Spirit of Freedom Fireworks Florence, TN—Fireworks

Sponsor: Urban Broadcasting.
Date: 4th of July.
Regulated Area: Mile Marker 255 to 257 Tennessee River.

12. Lake Guntersville 4th of July Celebration—Fireworks.

Sponsor: Lake Guntersville, AL Chamber of Commerce.
Date: 4th of July.
Regulated Area: Mile Marker 356 to 358 Tennessee River.

13. The Great Kiwanis Duck Race—Rubber Duck Regatta

Sponsor: Kiwanis Club of Chattanooga, TN.
Date: 3rd Weekend in June.
Regulated Area: Mile Marker 463 to 464 Tennessee River.

14. Chattanooga Dragon Boat Festival—Rowing Race

Sponsor: Dynamic Events and Management.
Date: 1st Weekend in August.
Regulated Area: Mile Marker 463 to 464 Tennessee River.

15. Pickwick Challenge—Powerboat Race

Sponsor: Pickwick Challenge, LLC.
Date: 1st Weekend in May.
Regulated Area: Mile Marker 206 to 210 Tennessee River.

16. Lighting Up the Cumberland—Fireworks

Sponsor: Town of Cumberland City, TN.
Date: 1st Saturday prior to 4th of July or on 4th of July if day is a Saturday.
Regulated Area: Mile Marker 103 to 105 Cumberland River.

17. Knoxville Dragon Boat Races—Rowing Race

Sponsor: Dynamic Events & Management.
Date: 4th Weekend in August.
Regulated Area: Mile Marker 647 to 648 Tennessee River.

18. Marietta Invitational Rowing Regatta

Sponsor: Marietta High School.
Date: 1 Day—2nd or 3rd weekend in April.
Regulated Area: Muskingum River Mile 0.5 to 1.5, Marietta, OH.

19. West Virginia Governor's Cup Regatta

Sponsor: University of Charleston.
Date: 1 Day—2nd or 3rd weekend in April.
Regulated Area: Kanawha River Mile 59.5 to 62.0, Charleston, WV.

20. Point Pleasant Sternwheel Regatta

Sponsor: City of Point Pleasant.
Date: 3 Days—1st or 2nd weekend in July.
Regulated Area: Ohio River Mile 265.0 to 266.0, Point Pleasant, WV.

21. Charleston 4th of July Celebration

Sponsor: City of Charleston.
Date: 2 Days—1st week in July.
Regulated Area: Kanawha River Mile 57.5 to 59, Charleston, WV.

22. Summer Motion

Sponsor: Summer Motion Inc.
Date: 3 Days—first week in July.
Regulated Area: Ohio River Mile 321.6 to 323.3.

23. Marietta Riverfront Roar Tunnel Boat Races

Sponsor: Marietta Riverfront Roar.
Date: 2 Days—2nd or 3rd weekend in July.
Regulated Area: Ohio River Mile 171.5 to 172.5, Marietta, OH.

24. Dawg Dazzle Fireworks Spectacular

Sponsor: Big Sandy Superstore Arena.
Date: 1 Day—1st week in July.
Regulated Area: Ohio River Mile 307.8 to 308.8, Huntington, WV.

25. Brundage Memorial Regatta

Sponsor: Brundage Regatta Committee.
Date: 1 Day—3rd or 4th weekend in May.
Regulated Area: Ohio River Mile 182.5 to 183.5.

26. St. Mary Medical Center Foundation Gala

Sponsor: St. Mary Medical Center Foundation.
Date: 1 Day—2nd or 3rd weekend in May.
Regulated Area: Ohio River Mile 307.8 to 308.8.

27. Dragon Boat Festival

Sponsor: Three Rivers Rowing Association.
Date: Middle of September.
Regulated Area: Monongahela River Miles 0.3, Pittsburgh, PA.

28. Pirates Fireworks

Sponsor: Pittsburgh Pirates.
Date: 3rd or 4th Friday of the month from April to September.
Regulated Area: Allegheny River Miles 0.4 to 0.6, Pittsburgh, PA.

29. Wheeling Vintage Regatta

Sponsor: Wheeling Vintage Race Boat Association.
Date: First week in September.
Regulated Area: Ohio River Miles 90.4 to 91.5, Wheeling, WV.

II. Sector Upper Mississippi River

1. Hudson Hot Air Affair

Sponsor: Hudson Hot Air Affair, Inc.
Dates: 1 day—1st Friday in February.
Regulated Area: St. Croix River mile 016.7.

2. Winter Carnival—Comcast Fireworks

Sponsor: St. Paul Festival and Heritage Foundation.
Dates: 1 day—1st Saturday in February.
Regulated Area: Upper Mississippi River miles 840.5–841.0.

3. St. Patrick's Water Parade

Sponsor: Lake West Chamber of Commerce.
Dates: 1 day—3rd Saturday in March.
Regulated Area: Lake of the Ozarks mile 013.0.

4. Deke Slayton Airfest, LaCrosse

Sponsor: Deke Slayton Airfest.
Dates: 3 days—3rd week in May.
Regulated Area: Upper Mississippi River mile 703.0.

5. That Was Then, This Is Now Boat Show & Exhibition

Sponsor: Clear Lake Chapter of the ACBS.
Dates: 1 day—3rd Saturday in May.
Regulated Area: Upper Mississippi River mile 454.0–456.0.

6. Tan-Tar-A Memorial Day Fireworks

Sponsor: Tan-Tar-A Resort.
Dates: 1 day—Last Sunday in May.
Regulated Area: Lake of the Ozarks mile 026.0.

7. Lodge of the Four Seasons Memorial Day

Sponsor: Lodge of the Four Seasons.
Dates: 1 day—Last Sunday in May.
Regulated Area: Lake of the Ozarks mile 014.0.

8. Steamboat Sports Festival

Sponsor: Peoria Area Community Events.
Dates: 2 day—2nd weekend in June.
Regulated Area: Illinois River mile 162.3–163.7.

9. Burlington Steamboat Days

Sponsor: Burlington Steamboat Days.
Dates: 1 day—3rd Sunday in June.
Regulated Area: Upper Mississippi River mile 404.0.

10. Winona Steamboat Days Fireworks

Sponsor: Winona Steamboat Days Festival.
Dates: 1 day—3rd Sunday in June.
Regulated Area: Upper Mississippi River miles 725.4–725.7.

11. Taste of the Quad Cities

Sponsor: Taste of the Quad Cities.
Dates: 1 day—2nd Friday in June.
Regulated Area: Upper Mississippi River mile 485.2.

12. Great Rivers Towboat Festival

Sponsor: Great Rivers Towboat Festival.
Dates: 2 day—3rd Weekend in June.
Regulated Area: Illinois River mile 000.2.

13. Water Ski Days

Sponsor: Lake City Chamber of Commerce.
Dates: 2 day—3rd Weekend in June.
Regulated Area: Upper Mississippi River miles 772.4–772.8.

14. Taste of Minnesota

Sponsor: Taste of Minnesota.
Dates: 5 day—Last week in June/ First week in July.
Regulated Area: Upper Mississippi River mile 840.0.

15. Sioux City Big Parade

Sponsor: City of Sioux City.
Dates: 1 day—Last weekend in June.
Regulated Area: Missouri River mile 732.0.

16. KC Riverfest

Sponsor: For—KC, Inc.
Dates: 1 day—Last weekend in June/ First weekend in July.
Regulated Area: Missouri River mile 365.0.

17. Bellevue Heritage Days

Sponsor: Bellevue Heritage Days.
Dates: 1 day—Last weekend in June/ First weekend in July.
Regulated Area: Upper Mississippi River miles 556.6–557.0.

18. Hudson Booster Days

Sponsor: Hudson Boosters.
Dates: 1 day—Last weekend in June/ First weekend in July.
Regulated Area: St. Croix River mile 017.0.

19. 3rd Annual Dosh River Rally

Sponsor: Village of Meredosia.
Dates: 1 day—First weekend in July.
Regulated Area: Illinois River mile 072.1.

20. Mississippi Fireworks Festival

Sponsor: Alton Exposition Commission.
Dates: 1 day—3rd or 4th of July.
Regulated Area: Upper Mississippi River miles 202.5–203.0.

21. Radio Dubuque

Sponsor: Radio Dubuque.
Dates: 1 day—3rd or 4th of July.
Regulated Area: Upper Mississippi River miles 581.2–583.0.

22. Omaha World Herald Fireworks

Sponsor: Omaha Royals.
Dates: 1 day—3rd or 4th of July.
Regulated Area: Missouri River miles 612.1–613.9.

23. Riverfest 2007—St. Charles

Sponsor: City of St. Charles.
Dates: 2 day—3rd or 4th of July.
Regulated Area: Missouri River miles 028.2–028.8.

24. Red White and Boom

Sponsor: Davenport One Chamber.
Dates: 1 day—3rd or 4th of July.
Regulated Area: Upper Mississippi River mile 482.5.

25. Fair of St. Louis

Sponsor: Fair St. Louis.
Dates: 2 day—Between the 1st and 4th of July.
Regulated Area: Upper Mississippi River miles 179.2–180.0.

26. Louisiana July 4th Fireworks

Sponsor: Louisiana Chamber of Commerce.
Dates: 1 day—4th of July.
Regulated Area: Upper Mississippi River miles 282.0–283.0.

27. John E. Curran Fireworks

Sponsor: John E. Curran.
Dates: 1 day—3rd or 4th of July.
Regulated Area: Lake of the Ozarks mile 009.0.

28. Nauvoo 4th of July

Sponsor: Nauvoo Chamber of Commerce.
Dates: 1 day—4th of July.
Regulated Area: Upper Mississippi River miles 375.0–376.0.

29. Red White and Boom Peoria

Sponsor: JMP Radio.
Dates: 1 day—4th of July.
Regulated Area: Illinois River miles 162.5–162.1.

30. Stillwater 4th of July

Sponsor: City of Stillwater/St. Croix Events.
Dates: 1 day—4th of July.
Regulated Area: St. Croix River miles 022.9–023.5.

31. Minneiska 4th of July

Sponsor: City of Minneiska.
Dates: 1 day—4th of July.
Regulated Area: Upper Mississippi River mile 743.0.

32. Fort Madison 4th of July

Sponsor: City of Fort Madison.
Dates: 1 day—4th of July.

Regulated Area: Upper Mississippi River mile 383.0–384.0.

33. Lake City 4th of July Fireworks

Sponsor: Lake City Chamber of Commerce.
Dates: 1 day—4th of July.
Regulated Area: Upper Mississippi River miles 772.4–772.8.

34. Hermann 4th of July

Sponsor: Hermann Chamber of Commerce
Dates: 1 day—4th of July.
Regulated Area: Missouri River mile 098.5.

35. Muscatine 4th of July

Sponsor: Greater Muscatine Chamber of Commerce.
Dates: 1 day—4th of July.
Regulated Area: Upper Mississippi River miles 455.0–456.0.

36. National Tom Sawyer Days

Sponsor: Hannibal JayCees.
Dates: 1 day—4th of July.
Regulated Area: Upper Mississippi River miles 308.0–309.0.

37. Mike Herrington Fireworks

Sponsor: Mike Herrington.
Dates: 1 day—4th of July.
Regulated Area: Lake of the Ozarks mile 002.0.

38. Riverfest, La Crosse

Sponsor: Riverfest, Inc.
Dates: 4 days—1st or 2nd week of July.
Regulated Area: Upper Mississippi River mile 698.0.

39. Salute to America

Sponsor: Salute to America Foundation, Inc.
Dates: 1 day—4th of July.
Regulated Area: Missouri River miles 143.0–143.5.

40. Grafton Chamber 4th of July Fireworks

Sponsor: Grafton Chamber of Commerce.
Dates: 1 day—4th of July.
Regulated Area: Illinois River mile 001.0.

41. Parkville 4th of July Fireworks

Sponsor: Main Street Parkville Assoc.
Dates: 1 day—4th of July.
Regulated Area: Missouri River mile 377.7.

42. Harrah's Fireworks Extravaganza

Sponsor: Harrah's Casino and Hotel.
Dates: 1 day—4th of July.
Regulated Area: Missouri River mile 615.3.

43. Hooligan Bay Fireworks Display

Sponsor: Hooligan Bay Resort.
Dates: 1 day—4th of July.
Regulated Area: Lake of the Ozarks mile 038.0.

44. Tan-Tar-A 4th of July Fireworks

Sponsor: Tan-Tar-A Resort.
Dates: 1 day—4th of July.
Regulated Area: Lake of the Ozarks mile 026.0.

45. Red, White and Boom Minneapolis

Sponsor: Minneapolis Park and Recreation Board.
Dates: 1 day—4th of July.
Regulated Area: Upper Mississippi River mile 854.0.

46. Chillicothe 4th of July

Sponsor: Chillicothe 4th of July.
Dates: 1 day—4th of July.
Regulated Area: Illinois River mile 179.1–180.1.

47. Lodge of the Four Seasons 4th of July

Sponsor: Lodge of the Four Seasons.
Dates: 1 day—4th of July.
Regulated Area: Lake of the Ozarks mile 014.0.

48. Gravois Mills Fireworks

Sponsor: Town of Gravois.
Dates: 1 day—1st week of July.
Regulated Area: Lake of the Ozarks mile 010.0.

49. Live on the Levee

Sponsor: Fair St. Louis.
Dates: Friday and Saturday, every weekend from the 2nd week of July until 2nd week in August.
Regulated Area: Upper Mississippi River miles 179.2–180.0.

50. Prairie du Chien Area Chamber Fireworks

Sponsor: Prairie du Chien Area Chamber of Commerce.
Dates: 1 day—2nd weekend of July.
Regulated Area: Upper Mississippi River mile 634.0.

51. Clinton Riverboat Days

Sponsor: Clinton Riverboat Days.
Dates: 2 days—2nd weekend of July.
Regulated Area: Upper Mississippi River miles 518.0–519.0.

52. Stars and Stripes River Day

Sponsor: Naturally Guttenberg.
Dates: 1 day—2nd weekend of July.
Regulated Area: Upper Mississippi River mile 615.0.

53. Sioux City Rivercade

Sponsor: Rivercade Association.
Dates: 1 day—3rd week of July.
Regulated Area: Missouri River mile 732.2.

54. Lumberjack Days

Sponsor: St. Croix Events.
Dates: 4 days—3rd week of July.
Regulated Area: St. Croix River miles 022.9–028.5.

55. Prairie Air Show

Sponsor: Prairie Airshow, Inc.
Dates: 1 day—2nd weekend of July.
Regulated Area: Illinois River mile 162.0.

56. Aquatennial Power Boat Grand Prix

Sponsor: Champboat Series LLC.
Dates: 2 days—3rd weekend of July.
Regulated Area: Upper Mississippi River miles 854.8–855.8.

57. Target Aquatennial Fireworks

Sponsor: Marketing Minneapolis, LLC.
Dates: 1 day—3rd weekend of July.
Regulated Area: Upper Mississippi River miles 853.2–854.2.

58. Rivertown Days

Sponsor: Hasting Riverboat Days.
Dates: 2 days—3rd weekend of July.
Regulated Area: Upper Mississippi River miles 812.0–815.3.

59. Cassville Twin-o-Rama

Sponsor: Cassville Twin-O-Rama.
Dates: 1 day—3rd weekend of July.
Regulated Area: Upper Mississippi River mile 606.5.

60. Amelia Earhart Festival

Sponsor: Amelia Earhart Festival Committee.
Dates: 2 days—3rd weekend of July.
Regulated Area: Missouri River miles 422.0–424.5.

61. River City Days

Sponsor: River City Days Association.
Dates: 2 days—1st week of August.
Regulated Area: Upper Mississippi River mile 791.6.

62. New Piasa Chautaqua

Sponsor: New Piasa Chautaqua
Dates: 1 day—1st weekend of August.
Regulated Area: Upper Mississippi River mile 215.0.

63. Great River Tug

Sponsor: Tug Committee.
Dates: 2 day—2nd weekend of August.
Regulated Area: Upper Mississippi River miles 497.2–497.6.

64. Evansville Day Drag Boat Race

Sponsor: St. Louis Drag Boat Association.
Dates: 2 day—2nd weekend of August.
Regulated Area: Kaskaskia River mile 010.0–011.0.

65. Lansing Fish Days

Sponsor: Lansing Lions Club.
Dates: 2 day—2nd weekend of August.
Regulated Area: Upper Mississippi River mile 662.5–663.8.

66. Lake Rescue Shoot Out

Sponsor: Lake Rescue Shoot Out INC.
Dates: 2 day—4th weekend of August.
Regulated Area: Lake of the Ozarks mile 021.0–023.0.

67. Tan-Tar-A Fireworks

Sponsor: Tan-Tar-A Resort.
Dates: 1 day—1st weekend of September.
Regulated Area: Lake of the Ozarks mile 026.0.

68. Mike Herrington Labor Day Fireworks

Sponsor: Mike Herrington.
Dates: 1 day—1st weekend of September.
Regulated Area: Lake of the Ozarks mile 002.0.

69. Lodge of the Four Seasons

Sponsor: Lodge of the Four Seasons.
Dates: 1 day—1st weekend of September.
Regulated Area: Lake of the Ozarks mile 014.0.

70. First City Festival

Sponsor: Leavenworth Main Street Program.
Dates: 2 day—2nd weekend of September.
Regulated Area: Missouri River mile 397.0–398.0.

71. Rodeo Cup XXVI

Sponsor: Old Fort Yacht Club.
Dates: 1 day—2nd weekend of September.
Regulated Area: Upper Mississippi River mile 374.0–375.0.

72. New Athens Drag Boat Race

Sponsor: St. Louis Drag Boat Association.
Dates: 2 day—2nd weekend of September.

Regulated Area: Kaskaskia River mile 028.0–029.0.

73. Riverfest 2007

Sponsor: Riverside Riverfest Committee.
Dates: 2 day—3rd weekend of September.
Regulated Area: Missouri River mile 371.1–371.3.

74. Railroad Days

Sponsor: Marquette Action Club.
Dates: 1 day—3rd weekend of September.
Regulated Area: Upper Mississippi River mile 634.5.

75. Missouri Governor's Cup

Sponsor: Valley Sailing Club.
Dates: 2 day—1st weekend of October.
Regulated Area: Upper Mississippi River mile 211.0–212.0.

III. Sector Lower Mississippi River

1. Memphis in May Canoe & Kayak Race

Sponsor: Outdoors, Inc.
Date: 1 Day—1st or 2nd Saturday in May.
Regulated Area: Lower Mississippi River miles 735.5–738.5, Memphis, TN.

2. Memphis in May Sunset Symphony Fireworks Display

Sponsor: Memphis in May International Festival, Inc.
Date: 1 Day—Saturday before Memorial Day.
Regulated Area: Lower Mississippi River miles 735.0–736.0, Memphis, TN.

3. Riverfest, Little Rock, Arkansas

Sponsor: Riverfest, Inc.
Date: 1 Day—Sunday before Memorial Day.
Regulated Area: Arkansas River miles 118.8–119.5, Main Street Bridge, Little Rock, AR.

4. Riverfest Fireworks Display

Sponsor: Old Fort Riverfest Committee.
Date: 1 Day—2nd or 3rd Saturday in June.
Regulated Area: Arkansas River miles 297.0–298.0, Fort Smith, AR.

5. Fourth of July Fireworks

Sponsor: Memphis Center City Commission.
Date: 1 Day—4th of July.
Regulated Area: Lower Mississippi River miles 735.5–736.5, Mud Island, Memphis, TN.

6. Pops on the River Fireworks Display

Sponsor: Arkansas Democrat-Gazette.
Date: 1 Day—4th of July.
Regulated Area: Arkansas River miles 118.8–119.5, Main Street Bridge, Little Rock, AR.

7. Uncle Sam Jam Fireworks, Alexandria, LA

Sponsor: Champion Broadcasting of Alexandria.
Date: 1 Day—4th of July.
Regulated Area: Red River, miles 83.0–87.0, Alexandria, LA.

IV. Sector Corpus Christi

1. Buccaneer Days Fireworks Display

Sponsor: Buccaneer Commission, Inc.
Date: 1 Day—3rd or 4th Friday in April.
Regulated Area: Bayfront, all waters inside Corpus Christi Marina Levee, Corpus Christi Bay, TX.

2. Corpus Christi 4th of July Fireworks Display

Sponsor: Buccaneer Commission, Inc.
Date: 1 day—July 4.
Regulated Area: Bayfront, all waters inside Corpus Christi Marina Levee, Corpus Christi Bay, TX.

3. City of Port Aransas 4th of July Fireworks Display

Sponsor: City of Port Aransas.
Date: 1 day—July 4.
Regulated Area: 600 foot radius from point halfway between Port Aransas Harbor Daybeacon 2 to Port Aransas Ferry Landing in the Corpus Christi Ship Channel, Port Aransas, TX.

4. Bayfest Fireworks Display

Sponsor: Bayfest, Inc.
Date: 1 day—Last Saturday in September.
Regulated Area: Bayfront, all waters inside Corpus Christi Marina Levee, Corpus Christi Bay, TX.

5. Harbor Lights

Sponsor: City of Corpus Christi.
Date: 1 day—1st Saturday in December.
Regulated Area: Bayfront, all waters inside Corpus Christi Marina Levee, Corpus Christi Bay, TX.

6. Wendell Family Fireworks

Sponsor: City of Rockport.
Date: 1 day—July 4.
Regulated Area: 700 foot radius at the northeast point of Rockport Beach Park.

V. Sector Houston-Galveston

1. Port Arthur Fourth of July Fireworks Demonstration, Port Arthur, TX

Sponsor: The City of Port Arthur and Lamar State College.
Date: 1 Day—4th of July.
Regulated Area: All waters of the Sabine-Neches Canal, bank to bank, from Wilson Middle School to the northern terminus of Old Golf Course Road.

2. Neches River Festival and Fireworks, Beaumont, TX

Sponsor: Port Neches Chamber of Commerce.
Date: 2 Days—2nd or 3rd Weekend in May.
Regulated Area: Adjacent to Port Neches between the northern boundary at 30°00′00″ N and the southern boundary at 29°59′42″ N.

3. Contraband Days Fireworks Display

Sponsor: Contraband Days Festivities, Inc.
Date: 1 Day—2nd Saturday of May.
Regulated Area: 500 foot radius from the fireworks barge in Lake Charles anchored at approximate position 30°13′5″ N, 093°13′42″ W Lake Charles, LA.

4. Neches River 4th of July Celebration

Sponsor: City of Beaumont.
Date: 1 Day—4th of July.
Regulated Area: River Front Park, Beaumont, TX—All waters of the Neches River, bank to bank, from the Trinity Industries Dry Dock to the northeast corner of the Port of Beaumont's dock No. 5.

5. National Safe Boating Week

Sponsor: Houston Power Squadron.
Date: Last weekend in May or first weekend in June.
Regulated Area: Clear Creek Channel from Light 2 up to, but not including, the South Shore Harbor Marina.

6. Sylvan Beach Fireworks Display, Sylvan Beach, Houston, TX

Sponsor: City of LaPorte.
Date: 1 Day—End of June or early July.
Regulated Area: Rectangle extending 250 feet East, 250 feet West; 1000 feet North, and 1000 feet South, centered around fireworks barge at Sylvan Beach, Houston, TX.

7. Clear Lake Fireworks Display, Clear Lake, Houston, TX

Sponsor: Clear Lake Chamber of Commerce.
Date: 1 Day—4th of July.
Regulated Area: Rectangle extending 500 feet East, 500 feet West; 1000 feet North, and 1000 feet South, centered around fireworks barge at Light 19 on Clear Lake, Houston, TX.

8. Blessing of the Fleet

Sponsor: Clear Lake Elks Club.
Date: First Sunday in August.
Regulated Area: Clear Creek Channel from Light 2 up to, but not including, the South Shore Harbor Marina.

9. Galveston Harbor Lighted Boat Parade

Sponsor: Historic Downtown/Strand Partnership.
Date: Last Saturday in November.
Regulated Area: Galveston Channel from Pier 9 to the Pelican Island Bridge.

10. Christmas Boat Parade on Clear Lake

Sponsor: Clear Lake Area Chamber of Commerce.
Date: 2nd Saturday in December.
Regulated Area: Clear Lake, Texas. From South Shore Harbor Marina down Clear Lake Channel, to Clear Creek Channel Light 2.

11. Kemah Board Walk Summer Season Fireworks Display, Kemah, TX

Sponsor: Kemah Boardwalk.
Date: Friday nights in June and July including July 4.
Regulated Area: Clear Creek Channel including a 840 ft radius centered around fireworks barge on south side of channel, 100 ft off Kemah Boardwalk, Galveston, TX.

VI. Sector New Orleans

1. Rivertown Christmas Festival

Sponsor: City of Port Allen.
Date: 1 Day—3rd Saturday in December.
Regulated Area: Located on Levee Batture, in vicinity of Old Ferry Landing, all waters of the Lower Mississippi River from mile marker 230–231, extending the entire width of the river.

2. Donaldsonville Fireworks Display

Sponsor: Donaldsonville Tourism Commission.
Date: 1 Day—31 December.
Regulated Area: located on the Levee Batture, all waters of the Lower Mississippi River from mile marker 175–176, extending the entire width of the river.

3. New Orleans New Years Eve

Sponsor: Mardi Gras World, INC.
Date: 1 Day—31 December.
Regulated Area: In vicinity of Jackson Square, all waters of the Lower Mississippi

River from mile marker 94 to 95, extending the entire width of the river.

4. Lundi Gras River Parade and Fireworks Display

Sponsor: (King REX and King ZULU) New Orleans RiverWalk Mktg. Group and ZULU Social Aid and Pleasure Club.
Date: 1 Day—LUNDI GRAS DAY.
Regulated Area: Delivery of King Rex to Spanish Plaza and King ZULU to Woldenburg Park, all waters of the Lower Mississippi River from mile marker 93 to 96, extending the entire width of the river New Orleans, LA.

5. Independence Day Celebration

Sponsor: Saint John the Baptist Parish.
Date: 1 Day—3 July.
Regulated Area: In vicinity of Saint Peters Church Reserve, LA. All waters of the Lower Mississippi River, from mile marker 138.5–139.5, extending the entire width of the river.

6. Donaldsonville Fireworks Display

Sponsor: Donaldsonville Tourism Commission.
Date: 1 Day—03 July.
Regulated Area: In the vicinity of Crescent Park Donaldsonville, LA. All waters of the Lower Mississippi River, from mile marker 175–176, extending the entire width of the river.

7. Independence Day Celebration

Sponsor: Saint Charles Parish Fireworks.
Date: 1 Day—03 July.
Regulated Area: Levee Batture, in the vicinity of I–310 Bridge Luling, LA. All waters of the Lower Mississippi River, from mile marker 121—122, extending the entire width of the river.

8. Independence Day Celebration (Dueling Barges)

Sponsor: Riverfront Marketing Group.
Date: 1 Day—04 July.
Regulated Area: In vicinity of Jackson Square and Spanish Plaza. All waters of Lower Mississippi River from mile marker 94.3–95.3, extending the entire width of the river.

9. Independence Day Celebration

Sponsor: WBRZ–TV, Baton Rouge, LA.
Date: 1 Day—04 July.
Regulated Area: In the vicinity of the USS KIDD, All waters of Lower Mississippi River, from mile marker 228.8–229.8, extending the entire width of the river.

10. Fourth of July Star-Spangled Celebration

Sponsor: USS KIDD Veterans Memorial Baton Rouge, LA.
Date: 1 Day—04 July.
Regulated Area: In the vicinity of 305 South River Road Baton Rouge, LA. All waters of the Lower Mississippi River, from mile marker 229.4–230, extending the entire width of the river.

11. Independence Day Celebration

Sponsor: Boomtown Casino.
Date: 1 Day—04 July.
Regulated Area: In the vicinity of Boomtown Casino, Harvey Canal from mile marker 4–5, extending the entire width of the canal.

12. Independence Day Celebration

Sponsor: City of Morgan City.
Date: 1 Day—04 July.
Regulated Area: Morgan City Port Allen Route mile marker 4–5.

13. LA Shrimp and Petroleum Festival & Fair Association

Sponsor: City of Morgan City.
Date: 1 Day—1st Sunday in September.
Regulated Area: Between Berwick Bay Southern Pacific Railroad Bridge and ¼ mile past HWY 182 Bridge on the Lower Atchafalaya River and Berwick Bay.

VII. Sector Mobile

1. Seroma's 4th of July

Sponsor: Seroma's 4th of July.
Date: 1 Day—July 4th.
Regulated Area: 100 feet east of Pitt's Slip, Pensacola Bay, Pensacola, FL.

2. South Georgia Showdown

Sponsor: Flint River Racers.
Date: 1 Day—Last Weekend in August, or First Weekend in September.
Regulated Area: South of Earl Maye Boat Basin, Flint River, Bainbridge, GA.

3. Thunder on the Gulf

Sponsor: Gulf Coast Power Boat Association.
Date: 2 Days—3rd weekend in August.
Regulated Area: Gulf of Mexico, Orange Beach, FL. e Beach, AL.

4. GYA Challenge Cup

Sponsor: Pensacola Yacht Club.
Date: 1 Day—4th weekend in June.
Regulated Area: Pensacola Bay, Pensacola, FL.

5. Christmas on the River

Sponsor: Demopolis Chamber of Commerce.
Date: 1 Day—1st Saturday in December from 6:00 p.m. to 8:30 p.m. CST.
Regulated Area: Tombigbee River from lock 4 to Caldwell Landing.

6. Christmas by the River

Sponsor: Moss Point Active Citizens.
Date: 1 Day—1st Saturday in December from 5:00 p.m. to 7:30 p.m. CST.
Regulated Area: Escataba River from bridge 613 to Moss Point City Docks.

7. Christmas on the Water

Sponsor: Biloxi Bay Chamber of Commerce.
Date: 1 Day—1st Saturday in December.
Regulated Area: Biloxi Channel from marker 5 to marker 28, Biloxi, MS.

8. Isle of Capri Anniversary Celebration

Sponsor: River Boat Corporation (Isle of Capri).
Date: 1 Day—August 1st from 8:45 p.m. to 10:00 p.m. CST.
Regulated Area: Mississippi Sound just South of Biloxi Ocean Springs Bridge, Biloxi, MS.

9. Billy Bowlegs Pirate festival gs Pirate Festival

Sponsor: Greater Fort Walton Beach Chamber of Commerce.
Date: 1 Day—1st weekend in June.
Regulated Area: Santa Rosa Sound, East of the Brooks Bridge to Fort Walton Yacht Club at Smack Pt., west to St. Simons Church.

10. Dauphin Island Race

Sponsor: Fairhope, Lake Forest, Mobile, and Buccaneer Yacht Clubs.
Date: 1 Day—Next to last or last weekend in April.
Regulated Area: Mobile Bay, Middle Bay Light to Marker #37, Mobile, AL.

11. Big River Blast

Sponsor: City of Chattahoochee.
Date: 1 Day—3rd weekend in April from 11:00 a.m. to 6:00 p.m. CST.
Regulated Area: Appalachicola River from the dam to quarter mile south of the dam, Chattahoochee, FL.

12. Chattahoochee Challenge

Sponsor: City of Chattahoochee.
Date: 1 Day—Last weekend in March from 11:00 a.m. to 6:00 p.m. CST.
Regulated Area: Appalachicola River from the dam to half a mile south of the dam, Chattahoochee, FL.

13. Harbor Walk Fireworks Display

Sponsor: Legendary Incorporated.
Date: Every Thursday evening from May to September, Memorial Day and Labor Day, from 8:00 p.m. to 8:30 p.m. CST.
Regulated Area: East Pass, 560 foot safety radius around barge, Destin, FL.

14. Smoking the Sound

Sponsor: Biloxi Bay Chamber of Commerce.
Date: 2 Days—Between the 4th week in March and the 2nd week in April from 9:00 a.m. to 6:00 p.m. CST.
Regulated Area: from bouy # 2 to # 35 in Biloxi Ship Channel.

15. Christmas Afloat

Sponsor: Christmas Afloat Incorporated.
Date: 1 Day—2nd or 3rd Saturday in December.
Regulated Area: Warrior River mile 341, Tuscaloosa County, AL.

16. Air Sea Rescue

Sponsor: Gulf Coast Shows.
Date: 1 Day—3rd or 4th weekend in February.
Regulated Area: Mobile River half a mile down river and half a mile upriver from the Mobile Convention Center.

17. Blessing of the Fleet

Sponsor: St. Michael's Catholic Church.
Date: 1 Day—1st Sunday in June.
Regulated Area: Entire Biloxi Channel, Biloxi, MS.

18. Blessing of the Fleet

Sponsor: St. Margaret Church.
Date: 1 Day—2nd or 3rd Sunday in May.
Regulated Area: Entire Bayou La Batre, Bayou La Batre, AL.

19. Flag Day Parade

Sponsor: Warrior River Boating Association.
Date: 1 Day—July 3rd.
Regulated Area: Warrior River Bankhead Lake River miles 368.4–386.4, Cottondale, AL.

20. Blue Angels Air Show

Sponsor: Naval Air Station Pensacola.
Date: 1 Day—2nd weekend in July.
Regulated Area: A 5 nautical mile radius from a center point located 1500 feet out from the Pensacola Beach shoreline in front of the Pensacola Beach water tank, Pensacola Beach, FL.

21. Boat Parade of Lights

Sponsor: City of Panama City/ St. Andrews Project.
Date: 1 Day—2nd Saturday in December from 5:30 to 7:30.
Regulated Area: St. Andrews Bay from St. Andrews Bay Yacht Club to St. Andrews Bay Marina.

22. Mardi Gras Boat Parade

Sponsor: Gulf Shores Homeport Marina.
Date: 1 Day—Monday before Mardi Gras Fat Tuesday.
Regulated Area: GIWW Pen Mobile Channel from Homeport Marina to Sailboat Bay.

23. Blessing of the Fleet

Sponsor: Panama City Marina.
Date: 1 Day—Last Saturday in March.
Regulated Area: Panama City Marina to east end of seawall.

24. Mobile Boat and Sportsman Show

Sponsor: Gulf Coast Shows.
Date: 4 Days—3rd or 4th weekend of February.
Regulated Area: Mobile River, ½ mile upriver and ½ mile down river from the Mobile Convention Center.

25. Bass Tournament Weigh-In

Sponsor: Gulf Coast Shows.
Date: 2 Days—3rd or 4th weekend in February.
Regulated Area: Mobile River, ½ mile upriver and ½ mile down river from the Mobile Convention Center.

26. Water Ski Demonstration

Sponsor: Gulf Coast Shows.
Date: 1 Day—3rd or 4th weekend in February.
Regulated Area: Mobile River, ½ mile upriver and ½ mile down river from the Mobile Convention Center.

Dated: May 21, 2008.

J.R. Whitehead,

Rear Admiral U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. E8–13272 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R9–IA–2008–0075; 96100–1671–0000–B6; 1018–AT56]

Endangered and Threatened Wildlife and Plants; Petition To Reclassify the Argentine Population of the Broad-Snouted Caiman From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 90-day finding on a petition to reclassify the Argentine population of the broad-snouted caiman (*Caiman latirostris*) from endangered to threatened under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific and commercial information indicating that the petitioned action of reclassifying the broad-snouted caiman in Argentina from endangered to threatened status under the Act may be warranted. Therefore, we are initiating a status review of the broad-snouted caiman to determine if reclassification of the population in Argentina, as petitioned, is warranted under the Act. To ensure that the status review is comprehensive, we are requesting submission of any new information on the broad-snouted caiman since its original listing as an endangered species in 1976. At the conclusion of our status review, we will make the requisite recommendation under section 4(c)(2)(B) of the Act and issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

DATES: To be considered in the 12-month finding on this petition, we will accept comments and information from all interested parties until September 15, 2008.

ADDRESSES: You may submit information, materials, and comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: [FWS–R9–IA–2008–0075]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive; Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Marie T. Maltese, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 110, Arlington, VA 22203; telephone: 703–358–1708; facsimile: 703–358–2276; e-mail: *ScientificAuthority@fws.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Information Solicited

We intend that any final action resulting from this status review will be as accurate and effective as possible based on the best available scientific and commercial information. Therefore, we solicit information, comments, or suggestions on the broad-snouted caiman from the public, concerned government agencies, the scientific community, industry, or any other interested party. We are opening a 90-day public comment period to allow all interested parties an opportunity to provide information on the status of the Argentine population of the broad-snouted caiman, as well as the status of the species throughout its range, including:

(1) Information on taxonomy, distribution, habitat selection and use, food habits, population density and trends, habitat trends, and effects of management on broad-snouted caimans in the wild;

(2) Information on broad-snouted caiman ranching programs in Argentina and throughout the caiman's range; including efficacy of programs, origin of parental stock, stock supplementation for any purpose, including genetic purposes, growth rates, birth and mortality rates in captivity, location of ranches in comparison to wild populations, effects of ranching on the species' natural habitats and wild populations, wastewater management, and any other factors occurring from ranching activities that might negatively affect or reduce the species' natural habitat or range;

(3) Information on the adequacy of existing regulatory mechanisms, trends in domestic and international trade, illicit hunting of wild broad-snouted caimans, illegal trade and enforcement efforts and current and/or future solutions to poaching and illegal trade, products resulting from caiman

ranching programs, current identification systems for products including tagging and marking, and use of the species by the scientific community;

(4) Information on the effects of other potential threat factors, including contaminants, changes in the distribution and abundance of wild populations, disease outbreaks within ranching programs, large mortality events, or negative effects resulting from the presence of invasive species;

(5) Information on management programs for broad-snouted caiman conservation in the wild, including private or government-funded conservation programs that benefit broad-snouted caimans; and

(6) Information relevant to the possibility that the Argentine population of the broad-snouted caiman may qualify as a distinct population segment.

We will base our finding on a review of the best scientific and commercial information available, including all information received during the public comment period.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We will not accept comments you send by e-mail or fax.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this 90-day finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Scientific Authority (see previous section: **FOR FURTHER INFORMATION CONTACT**).

Background

We received a petition from the Government of Argentina dated November 5, 2007, requesting that we reclassify the broad-snouted caiman (*Caiman latirostris*) in Argentina from endangered to threatened. The petition contained detailed information about the natural history and biology of the broad-snouted caiman, including the species' current status and distribution.

The broad-snouted caiman is a medium-sized crocodilian reaching no more than 2 meters (6.6 feet) in total length at maturity. Species distribution includes Argentina, Bolivia, Brazil, Paraguay, and northern Uruguay. The species is found mostly in freshwater marsh, swamp, and mangrove habitats. Recent surveys in Argentina indicate that much of the original broad-snouted caiman's habitat remains, and healthy wild populations have been located. Experimental caiman ranching programs have proven successful, indicating that the establishment of ranching programs could yield commercial-scale results if properly managed.

On May 22, 1975, the Fund for Animals, Inc. (Fund) submitted a request to the Service to list as endangered species 216 taxa of animals and plants that were listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, or Convention) and that did not already appear on the U.S. Lists of Endangered Wildlife and Plants (Lists). The Fund contended that signature and ratification of CITES by the United States was an acknowledgment of the endangered status of these species and that they therefore should appear on the Lists pursuant to the Act (40 FR 44329).

CITES is an international treaty for the conservation of wild fauna and flora subject to trade; it was drafted in 1973 and had been ratified by enough nations by 1975 to enter into force. The United States ratified the treaty on September 13, 1973 (41 FR 24062; June 14, 1976). Accession to CITES is open to all nations that wish to reduce the impact of international trade on wildlife and plants. CITES includes three Appendices that list species meeting specific criteria. Depending on the Appendix in which they are listed, species are subject to permitting requirements intended to ensure that international trade in them is legal and does not threaten their survival. Appendix-I species are those that are threatened with extinction and which are, or may be, affected by trade. Commercial trade in Appendix-I species is strictly prohibited. On July 1, 1975, the date the Convention was entered into force, Appendix I of the Convention included over 200 species, including the broad-snouted caiman.

As a result of the Fund's listing request, the Service published a proposed rule on September 26, 1975: ''Proposed Endangered Status for 216 Species Appearing on Convention on International Trade'' (40 FR 44329). The proposed rule requested public comments regarding amendment of the Lists through the addition of species included in CITES Appendix I. On June 14, 1976, a final rule entitled ''Endangered Status for 159 Taxa of Animals'' was published in the **Federal Register** (41 FR 24062). These species included some, but not all, of the Appendix-I species that had been listed under CITES and whose listing under the Act had been requested by the Fund. In 1976, the Convention had only been ratified for one year, and ratification by additional member nations was necessary for CITES to become a stronger international trade measure. Until the number of Parties to CITES increased, however, the commercial importance of the species that were determined to be endangered in the listing rule and the inadequacy of existing regulatory mechanisms to control international trade continued to be factors of major concern. It was believed that the listing action was imperative, to provide an interim regulatory mechanism to restrict U.S. trade in listed species and, ultimately, as a supportive measure to further address the conservation purposes of CITES.

The broad-snouted caiman is currently listed in Appendix I of CITES, range-wide except in Argentina (*http://www.cites.org*). The Argentine population was downlisted to Appendix II in 1997, with support from the United States. In addition, under CITES Resolution 11.12: *Universal Tagging System for the Identification of Crocodilian Skins*, all crocodilian skins must be affixed with a non-reusable tag from the country of origin prior to entering international trade (*http://www.cites.org*). Tagging crocodilian skins allows individual countries to track quotas, prevent illegal trade, and ensure that annual take is not detrimental to the survival of the species. Through a system of permits, the CITES Appendix-II listing allows international trade in Argentine broad-snouted caiman parts and products throughout the world, with one exception: Trade in Argentine broad-snouted caiman specimens is prohibited in the United States because the species is listed as endangered (41 FR 24062; June 14, 1976) under section 4 of the Act (16 U.S.C. 1531 *et seq.*).

With this petition, the Government of Argentina requests reclassification of the species from endangered to threatened in their country only, because populations are healthy, habitat remains plentiful, and caiman ranching programs have proven successful. Reclassification of the species may allow the establishment of trade in ranched specimens of broad-snouted

caimans from Argentina to the United States and re-export from other CITES Parties.

Finding

On the basis of the information provided in the petition, we have determined that the petition presents substantial scientific and commercial information that reclassifying the broad-snouted caiman from endangered to threatened in Argentina may be warranted. Therefore, we are initiating a status review to determine if reclassification of the species is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding this species. Under section 4(b)(3)(B) of the Act, we are required to make a finding as to whether reclassification of the broad-snouted caiman is warranted within 12-months of receipt of the petition.

Author

The primary author of this document is Marie T. Maltese of the Division of Scientific Authority, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 4, 2008.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–13162 Filed 6–13–08; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 73, No. 116
Monday, June 16, 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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Food Stamp Program Pre-Screening Tool Survey

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed revision of this currently approved collection. The information collection involves the use of a Web-based pre-screening tool for the general public to use to determine potential eligibility for Food Stamp Program benefits.

DATES: Written comments must be submitted on or before August 15, 2008.

ADDRESSES: 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.

Comments may be sent to Patrick Waldron, Branch Chief, Program Development Division, Food Stamp Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 810, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Patrick Waldron at 703–305–2486 or via e-mail to *Patrick.Waldron@fns.usda.gov*.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 810.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Patrick Waldron at (703) 305–2495.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program Pre-Screening Tool.

OMB Number: 0584–0519.

Expiration Date: August 31, 2008.

Type of Request: Revision of a currently approved collection.

Abstract: In June 2003, the Food and Nutrition Service (FNS) deployed an interactive Web-based food stamp pre-screening tool that can be utilized by the general public to determine potential Food Stamp Program eligibility. A previous notice was published in the **Federal Register** on May 31, 2005 at 70 FR 30922 (2005). The pre-screening tool helps the users determine their eligibility for food stamps. Once the user enters household size, income, expenses and resource information, the tool will calculate and provide the user with an estimated range of benefits that the household may be eligible to receive. Since food stamp eligibility and benefit amount may vary by location, FNS makes it clear that the tool is only an estimator, and the household will need to contact the local agency to determine actual eligibility and the appropriate benefit amount. Other data collected are:

- ID (Each entry is assigned a unique identifier);
- State: State or territory in which the user resides;
- Number of Children: Number of children in the household;
- Number of Elderly: Number of elderly members in the household;
- Migrant Workers: Is anyone in the household a seasonal or migrant farm worker;
- Homeless: Is the household homeless or living in a shelter;
- User Type: Who is using the tool;
- User Referral: How the user heard about the tool;
- Amount: If user was eligible to receive benefits and if so the estimated range of benefits.

Although the tool also requests the name and age of the user, FNS does not retain this information or any other specific information like social security numbers, birthdays, etc. about the household itself in the tool. However, the system does request the following information during the initial process in which the user enters data:

- Whether the user is using the tool for personal reasons or on behalf of others; and
- If they are using it on behalf of others, the user will be asked to identify him/herself (e.g., relative of a person in need, advocacy organization, faith-based group, etc.) using a drop down menu.

Once the user logs out of the system, none of the user-provided information is retained by FNS.

The survey component of the tool was removed since the program analysis of this data is no longer necessary. Thus, the projected annual burden hours of 48,183 are reduced by 4,183.

Estimate of Burden

Pre-Screening Tool Component Burden

Affected Public: Individuals and Households.

Estimated Number of Respondents: 264,000 per year.

Number of Responses per Respondent: 1.

Total Number of Annual Responses: 264,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden: 44,000 hours.

Estimated Total Pre-Screening Tool Annual Burden = 44,000.

Dated: June 10, 2008.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E8–13410 Filed 6–13–08; 8:45 am]

BILLING CODE 3410–30–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received On or Before: July 13, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Sponge, Cellulose Heavy Duty Scrubber

NSN: 7920–00–NIB–0466.
NPA: Mississippi Industries for the Blind, Jackson, MS.
Coverage: B–List for the broad Government requirements as specified by the General Services Administration.
Contracting Activity: General Services Administration, Southwest Supply Center, Fort Worth, TX.

Portfolio, Clear Front Report Cover w/Prongs

NSN: 7510–00–NIB–0811—Black with prongs.
NSN: 7510–00–NIB–0812—Light Blue with prongs.
NSN: 7510–00–NIB–0813—Red with prongs.
NSN: 7510–00–NIB–0814—Dark Green with prongs.
NPA: Susquehanna Association for the Blind and Visually Impaired, Lancaster, PA.
Coverage: A–List for the total Government requirements as specified by the General Services Administration.

Dispenser, Tape

NSN: 7520–00–NIB–1882—Package Sealing.
NPA: Cincinnati Association for the Blind, Cincinnati, OH.
Coverage: A–List for the total Government requirements as specified by the General Services Administration.

Stapler, Spring Power

NSN: 7520–00–NIB–1916—20 sheet capacity.
NSN: 7520–00–NIB–1917—65 sheet capacity.
NSN: 7520–00–NIB–1992—15 sheet capacity.
NSN: 7520–00–NIB–1993—25 sheet capacity.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.
Coverage: A–List for the total Government requirements as specified by the General Services Administration.

USB Flash Drive, Flip Style

NSN: 7520–00–NIB–1873—1 GB, no encryption.
NSN: 7520–00–NIB–1874—2 GB, no encryption.
NSN: 7520–00–NIB–1875—4GB, no encryption.
NSN: 7520–00–NIB–1877—1GB, with encryption.
NSN: 7520–00–NIB–1878—2GB, with encryption.
NSN: 7520–00–NIB–1879—4GB, with encryption.
NSN: 7520–00–NIB–1974—8GB, no encryption.
NSN: 7520–00–NIB–1976—8GB, with encryption.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Coverage: A–List for the total Government requirements as specified by the General Services Administration..
Contracting Activity: General Services Administration, Federal Supply Services, Region 2, New York, NY

Services

Service Type/Location: Administrative Support Services, Caribbean National Forest, El Portal Rain Forest Center, Rio Grande, PR.
NPA: The Corporate Source, Inc., New York, NY.
Contracting Activity: U.S. Department of Agriculture, Forest Service Cherokee, National Forests—Tennessee, Cleveland, TN.
Service Type/Location: Base Supply Center, Naval Surface Warfare Center, Crane Division, Crane, IN.
NPA: L.C. Industries For The Blind, Inc., Durham, NC.
Contracting Activity: Fleet and Industrial Supply Center (FISC), Norfolk, VA.
Service Type/Location: Document Destruction, U.S. Army Corps of Engineers (USACE), Albuquerque District, 4101 Jefferson Plaza, NE., Albuquerque, NM.
NPA: Adelante Development Center, Inc., Albuquerque, NM.
Contracting Activity: U.S. Army Corps of Engineers, Albuquerque, NM.
Service Type/Location: Grounds Maintenance, Cape Canaveral Air Force Station, Basewide, Cape Canaveral AFS, FL.
NPA: PRIDE Industries, Roseville, CA.
Contracting Activity: 45 CONS/LGCZ, Patrick AFB, FL.
Service Type/Location(s): Laundry Services, Clement J. Zablocki Veterans Affairs Medical Center, 5000 West National Avenue, Milwaukee, WI;
Laundry Services, North Chicago Veterans Affairs Medical Center, 3001 Green Bay Road, North Chicago, IL.
NPA: Goodwill Industries of Southeastern Wisconsin, Inc., Milwaukee, WI.
Contracting Activity: Department of Veterans Affairs, Great Lakes Network—Contract Service Center, Milwaukee, WI.
Service Type/Location: Mailroom Operations, Fort Knox, Fort Knox, KY.
NPA: Employment Source, Inc., Fayetteville, NC.
Contracting Activity: U.S. Army Armor Center & Fort Knox, Fort Knox, KY.
Service Type/Location: Mailroom Operations, Internal Revenue Service, 880 Front Street, San Diego, CA.
NPA: ServiceSource, Inc., Alexandria, VA (PRIME Contractor).
NPA: Goodwill Industries of Southern California, Los Angeles, CA (Sub-Contractor).
Contracting Activity: U.S. Department of the Treasury, Internal Revenue Service Headquarters, Oxon Hill, MD.
Service Type/Location: Mailroom Operations, United States Coast Guard, Integrated Support Command (ISC), Alameda Mail Center, Alameda, CA.
NPA: Pacific Coast Community Services,

Richmond, CA.
Contracting Activity: U.S. Coast Guard—Alameda, Alameda, CA.

Kimberly M. Zeich,
Director, Program Operations.
[FR Doc. E8–13361 Filed 6–13–08; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and a service previously furnished by such agencies.

EFFECTIVE DATE: July 13, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On April 18, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 21107) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services:

Service Type/Location: Base Supply Center & HAZMAT, Naval Air Station—Joint Reserve Base (NASJRB), New Orleans, LA.
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, NC.
Contracting Activity: Fleet and Industrial Supply Center—Jacksonville, Jacksonville, FL.

Service Type/Location: Custodial Services, Fort Sam Houston, Camp Bullis, Building 6116, San Antonio, TX.
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX.
Contracting Activity: Southern Region Contracting Center—West, Fort Sam Houston, TX.

Deletions

On April 18, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 21107) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service deleted from the Procurement List.

End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

Products:

Computer Accessories
NSN: 7045–01–483–7832—CD Organizer.
NSN: 7045–01–483–7837—Ergo Gel Keyboard and Monitor Platform.
NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, WI.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr., New York, NY.

Frame, Transparency Mounting
NSN: 6750–00–378–6825.
NPA: Industries of the Blind, Inc., Greensboro, NC.
Contracting Activity: General Services Administration, Office and Photographic Equipment Division.

Hydration On-the-Move System
NSN: 8465–00–NIB–0041—Canteen, One Quart Flexible—Echo.
NSN: 8465–00–NIB–0071—Bravo Woodland.
NSN: 8465–00–NIB–0072—Bravo Desert.
NSN: 8465–00–NIB–0073—Bravo Black.
NSN: 8465–00–NIB–0074—Delta Woodland.
NSN: 8465–00–NIB–0075—Delta Desert.
NSN: 8465–00–NIB–0076—Delta Black.
NSN: 8465–00–NIB–0077—Alpha Woodland.
NSN: 8465–00–NIB–0092—Warrior Woodland.
NSN: 8465–00–NIB–0093—Warrior Desert.
NSN: 8465–00–NIB–0094—Warrior Black.
NSN: 8465–00–NIB–0095—Sierra Woodland.
NSN: 8465–00–NIB–0096—Sierra Desert.
NSN: 8465–00–NIB–0097—Sierra Black.
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr., New York, NY.

Service:

Service Type/Location: Janitorial/Custodial, Social Security Administration Building, 142 Auburn Street, Pontiac, MI.
NPA: New Horizons Rehabilitation Services, Inc., Auburn Hills, MI.
Contracting Activity: General Services Administration, Region 5, Chicago, IL.

Kimberly M. Zeich,
Director, Program Operations.
[FR Doc. E8–13362 Filed 6–13–08; 8:45 am]
BILLING CODE 6353–01–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: High Seas Fishing Vessel Reporting Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0349.

Type of Request: Regular submission.

Burden Hours: 850.

Number of Respondents: 550.

Average Hours per Response: Report for days fished, 5 minutes; for negative reporting (no fishing that day), 1 minute.

Needs and Uses: Vessels licensed under the High Seas Fishing Compliance Act are required to report their catch and effort (logbooks) when fishing on the high seas. Monthly negative reports are required if not fishing. These logbooks are not required if the vessel is already reporting catches and effort under other National Oceanic and Atmospheric Administration (NOAA) regulations. The information is needed for fishery management and to provide data to international organizations.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

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: June 11, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–13440 Filed 6–13–08; 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: Coral Reef Conservation Program Administration.

Form Number(s): None.

OMB Approval Number: 0648–0448.

Type of Request: Regular submission.

Burden Hours: 112.

Number of Respondents: 28.

Average Hours Per Response: Waiver requests, 30 minutes; reviewer comments, 1 hour, 30 minutes.

Needs and Uses: The Coral Reef Conservation Grant Program provides funds to a broad-based group of applicants with experience in coral reef conservation to conduct activities to protect and conserve coral reef ecosystems. The information submitted is used to determine: (1) whether the applicant qualifies for a waiver of matching funds, and (2) if a proposed project is consistent with the coral reef conservation priorities of authorities with jurisdiction over the area where the project will be carried out. Respondents will be applicants to the grant program and/or reviewers of relevant project proposals.

Affected Public: Not-for-profit institutions; business or other for-profit organizations; State, Local or Tribal Government.

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: June 11, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–13441 Filed 6–13–08; 8:45 am]

BILLING CODE 3510–JS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Import Certificates, End-User Certificates, and Delivery Verification Procedures

AGENCY: Bureau of Industry and Security.

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 August 15, 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 Larry Hall, BIS ICB Liaison, (202) 482–4896, *lhall@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information provides the certification of the overseas importer to the U.S. Government that specific commodities will be imported from the U.S. and will not be reexported, except in accordance with U.S. export regulations.

II. Method of Collection

Submitted electronically or in paper form.

III. Data

OMB Control Number: 0694–0093.

Form Number(s): None.

Type of Review: Business or other for-profit organizations.

Estimated Number of Respondents: 2,222.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 645.

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: June 11, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–13504 Filed 6–13–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–357–812

Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is partially rescinding its administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2006, to November 30, 2007 with respect to eleven companies. This rescission, in part, is based on the timely withdrawal of the request for review by the interested parties that requested the review. A complete list of the companies for which the administrative review is being rescinded is provided in the background section below.

EFFECTIVE DATE: June 16, 2008

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

On December 3, 2007, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of the antidumping duty order on honey from Argentina. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 67889 (December 3, 2007). In response, on December 31, 2007, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) requested an administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2006, through November 30, 2007. The petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by thirteen Argentine producers/exporters.[1] In addition, the Department received requests for review from four Argentine exporters included in the petitioners' request. Furthermore, the Department received one request from an exporter that was not included in petitioners' request for review.

On January 28, 2008, the Department initiated a review of the 14 companies[2] for which an administrative review was requested. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 4829 (January 28, 2008).

On February 19, 2007, petitioners timely withdrew their requests for review of the following companies: AGLH S.A., Algodonera Avellaneda S.A., Bomare S.A. (Bodegas Miguel Armengol), Mercoline S.A., Productos Afer S.A., and Seabird Argentina S.A. On March 18, 2008, petitioners timely withdrew their requests for review of El Mana S.A., HoneyMax S.A., and Nexco S.A. On May 22, 2008, both petitioners and CAA/Mielar submitted letters withdrawing their requests for an administrative review of CAA/Mielar.

Scope of the Order

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise under the scope of the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, the Department's written description of the merchandise under this order is dispositive.

Rescission, in Part, of Administrative Review

Section 351.213(d)(1) of the Department's regulations provides that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws at a later date if the Department determines it is reasonable to extend the time limit for withdrawing the request.

The petitioners timely withdrew their requests for an administrative review within the 90-day deadline for the following companies: AGLH S.A., Algodonera Avellaneda S.A., Bomare S.A. (Bodegas Miguel Armengol), El Mana S.A., HoneyMax S.A., Mercoline S.A., Nexco S.A., Productos Afer S.A., and Seabird Argentina S.A. Because the petitioners were the only party to request administrative review of each of these companies, we are rescinding the review with regard to AGLH S.A., Algodonera Avellaneda S.A., Bomare S.A. (Bodegas Miguel Armengol), El Mana S.A., HoneyMax S.A., Mercoline S.A., Nexco S.A., Productos Afer S.A., and Seabird Argentina S.A.

With respect to CAA/Mielar, both petitioners and CAA/Mielar withdrew their review requests after the 90-day deadline, despite petitioners' and CAA/Mielar's claims to the contrary in their May 22, 2008 requests for withdrawal. However, the Department finds it reasonable to extend the withdrawal deadline for CAA/Mielar because the Department has not yet devoted significant time or resources to this review. Further, we find that neither petitioners' nor CAA/Mielar's withdrawal of their requests for a review of CAA/Mielar constitutes an abuse of

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[1] Petitioners requested Compania Apicola Argentina S.A. (CAA) and Mielar S.A. (Mielar) as separate entities. However, in a previous segment of this proceeding, the Department treated these two companies as a single entity.

[2] The **Federal Register** notice lists 15 companies but, as explained in footnote 1, CAA and Mielar are currently being treated as a single entity based on decisions made in a previous segment of this proceeding. Accordingly, there are a total of 14 companies for which reviews were requested.

our procedures. *See, e.g., Persulfates from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review*, 71 FR 13810, 13811 (March 17, 2006). As a result, we are rescinding this review with regard to CAA/Mielar.

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) 15 days after the publication of this notice. The Department will direct CBP to assess antidumping duties for these companies at the cash deposit rate in effect on the date of entry for entries during the period December 1, 2006 to November 30, 2007.

Notification to Parties

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

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

This notice is issued and published in accordance with section 351.213(d)(4) of the Department's regulations and sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: June 9, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–13481 Filed 6–13–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–838)

Certain Frozen Warmwater Shrimp from Brazil: Notice of Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: June 16, 2008.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4929 or (202)482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2008, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain frozen warmwater shrimp from Brazil for the period February 1, 2007, through January 31, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 6477 (February 4, 2008). The Department received timely requests from the petitioner,[1] and the Louisiana Shrimp Association, in accordance with 19 CFR 351.213(b), for an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Brazil. On April 7, 2008, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Brazil with respect to 43 companies. *See Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand: Notice of Initiation of Administrative Reviews*, 73 FR 18754 (April 7, 2008) (*Initiation Notice*).

The Department stated in its initiation of this review that it intended to rely on U.S. Customs and Border Protection (CBP) data to select respondents. *See Initiation Notice*. However, our review of the CBP database showed no entries of certain frozen warmwater shrimp originating in Brazil, subject to AD/CVD duties, during the period February 1, 2007 to January 31, 2008. *See* April 9, 2008, Memorandum to the File from Kate Johnson and Rebecca Trainor entitled ''Release of POR Entry Data from CBP''. We released the results of our CBP data query to interested parties and invited them to comment on the CBP data and respondent selection. On April 17, 2008, the petitioner submitted comments, which we addressed in the May 29, 2008, Memorandum to James Maeder, Director, Office 2, AD/CVD Operations from Kate Johnson and Rebecca Trainor, Senior Case Analysts, Office 2, AD/CVD Operations, entitled ''Intent to Rescind Administrative Review.''

On April 30, 2008, we sent a ''No Shipments Inquiry'' to CBP to confirm that there were no shipments or entries of frozen warmwater shrimp from Brazil during the POR. We received no information from CBP to contradict the results of our data query that there were no shipments or entries of subject merchandise to the United States during the period of review (POR).

Rescission of Review

Section 351.213(d)(3) of the Department's regulations stipulates that the Secretary may rescind an administrative review if there were no entries, exports, or sales of the subject merchandise during the POR. As there were no entries, exports, or sales of the subject merchandise during the POR, we are rescinding this review of the antidumping duty order on certain frozen warmwater shrimp from Brazil pursuant to 19 CFR 351.213(d)(3). We intend to issue assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 9, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–13476 Filed 6–13–08; 8:45 am]

BILLING CODE 3510–DS–S

[1] The petitioner is the Ad Hoc Shrimp Trade Action Committee.

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–909

Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances

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

EFFECTIVE DATE: June 16, 2008.

SUMMARY: On January 23, 2008, the Department of Commerce (the ''Department'') published its preliminary determination of sales at less than fair value (''LTFV'') in the antidumping investigation of certain steel nails (''nails'') from the People's Republic of China (''PRC''). The Department amended it preliminary determination on February 7, 2008, based on comments from interested parties. The period of investigation (''POI'') is October 1, 2006, to March 31, 2007. We invited interested parties to comment on our preliminary and amended preliminary determinations of sales at LTFV. Based on our analysis of the comments we received, we have made changes to our calculations for the mandatory respondents. We determine that nails from the PRC are being, or is likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Final Determination Margins'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey or Alex Villanueva, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2312 and (202) 482–3208, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The Department published its preliminary determination of sales at LTFV on January 23, 2008. *See Certain Steel Nails from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination*, 73 FR 3928 (January 23, 2008) (''*Preliminary Determination*''). The Department published an amended preliminary determination on February 7, 2008. *See Certain Steel Nails from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 7254 (February 7, 2008) (''*Amended Preliminary Determination*''). The Department issued a post–preliminary determination on April 21, 2008, in which it applied a new targeted dumping methodology. *See* Memorandum to David Spooner, Assistant Secretary for Import Administration entitled ''Post–Preliminary Determinations on Targeted Dumping,'' dated April 21, 2008 (''Post–Preliminary Determination'').

We issued ITW[1] and Xingya Group[2] additional supplemental questionnaires on January 28, 2008, and February 6, 2008, respectively. We received ITW's response on February 5, 2008, and Xingya Gorup's response on February 13, 2008.

Between February 11 and February 22, 2008, the Department conducted verifications of ITW Paslode[3] and Xingya Group's affiliated importers Senco[4] and Omnifast[5] in Chicago and Cincinnati, respectively. Between March 7 and March 21, 2008, the Department verified Paslode Shanghai,[6] Xingya Group,[7] and Suntec Industries Co., Ltd.[8] in the PRC. *See* the ''Verification'' section below for additional information.

In the *Preliminary Determination*, based on our examination of Petitioners' targeted dumping allegations for ITW filed on December 11, 2007, and revised on December 13, 2007, and for Xingya Group filed on December 14, 2007, we preliminarily determined that there was a pattern of export prices for comparable merchandise that differs significantly among regions for ITW and purchasers for Xingya Group. Therefore, based on Petitioners' allegation, we conducted an analysis to determine whether targeted dumping occurred. The Department further stated that it was in the process of re–assessing the framework and standards for both targeted dumping allegations and targeted dumping analyses, and that it intended to develop a new framework in the context of this proceeding. We invited comments regarding certain principles involved in targeted dumping allegations and analyses. Accordingly, we received comments from Petitioners in this investigation,[9] and the mandatory respondents, ITW and Xingya Group, on February 15, 2008. These parties submitted rebuttal comments on March 10, 2008.

On April 21, 2008, the Department issued a decision memorandum in this investigation and the companion investigation on certain steel nails from the United Arab Emirates (''UAE''), in which the Department described the application of a new methodology to analyze targeted dumping. *See* Memorandum to David Spooner, Assistant Secretary for Import Administration entitled ''Post–Preliminary Determinations on Targeted Dumping,'' dated April 21, 2008.

Based on this analysis, the Department found that a pattern of export prices for identical merchandise

[1] Illinois Tool Works Inc., Paslode Division (''ITW Paslode'') and Paslode Fasteners (Shanghai) Co., Ltd. (''Paslode Shanghai'') (collectively, ''ITW'').

[2] Suzhou Xingya Nail Co., Ltd, Senco-Xingya Metal Products (Taicang) Co., Ltd., Yunfa International Resources In., Senco Products, Inc. (''Senco''), and Omnifast Inc. (''Omnifast'') (collectively ''Xingya Group'').

[3] *See* Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Senior Case Analyst: Verification of the Sales Response of Illinois Tool Works Inc., Paslode Division in the Antidumping Investigation of Certain Steel Nails from the People's Republic of China, dated March 3, 2008 (''ITW Paslode Verification Report'').

[4] *See* Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Matthew Renkey, Senior Case Analyst: Verification of the Sales Response of Senco Products, Inc. in the Antidumping Investigation of Certain Steel Nails from the People's Republic of China, dated April 10, 2008 (''Senco Verification Report'').

[5] *See* Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Matthew Renkey, Senior Case Analyst: Verification of the Sales Response of Omnifast LLC in the Antidumping Investigation of Certain Steel Nails from the People's Republic of China, dated April 8, 2008 (''Omnifast Verification Report'').

[6] *See* Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Senior Case Analyst: Verification of the Sales and Factors Response of Paslode Fasteners (Shanghai) Co., Ltd. in the Antidumping Investigation of Certain Steel Nails from the People's Republic of China, dated April 15, 2008 (''Paslode Shanghai Verification Report'').

[7] *See* Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Matthew Renkey, Senior Case Analyst: Verification of the Sales and Factors Response of the Xingya Group in the Antidumping Investigation of Certain Steel Nails from the People's Republic of China,'' dated April 21, 2008 (''Xingya Group Verification Report'').

[8] *See* Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Senior Case Analyst: Verification of the Sales of Suntec Industries Co., Ltd. in the Antidumping Investigation of Certain Steel Nails from the People's Republic of China, dated April 18, 2008.

[9] Petitioners are: Mid Continent Nail Corporation; Davis Wire Corporation; Gerdau Ameristeel Corporation (Atlas Steel & Wire Division); Maze Nails (Division of W.H. Maze Company); Treasure Coast Fasteners, Inc.; and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

existed that differed significantly among purchasers for Xingya Group. *See* Memorandum to: James C. Doyle, Director, from: Alex Villanueva, Program Manager, RE: Antidumping Duty Investigation of Certain Steel Nails from the People's Republic of China, Regarding: Post–Preliminary Determination Analysis on Targeted Dumping: Results for the Xingya Group, dated April 21, 2008. As a result, we applied the average–to-transaction methodology to the targeted export prices and found a margin of 48.63 percent for Xingya Group. However, the Department did not find a pattern of export prices for identical merchandise that differed significantly among regions for ITW. *See* Memorandum to: James C. Doyle, Director, from: Alex Villanueva, Program Manager, RE: Antidumping Duty Investigation of Certain Steel Nails from the People's Republic of China, Regarding: Post–Preliminary Determination Analysis on Targeted Dumping: Results for ITW, dated April 21, 2008. As a result, we applied the average–to-average methodology to all U.S. sales and found a *de minimis* margin of 0.11 percent for ITW. On April 24, 2008, the Department issued a letter to all parties in the two investigations providing clarifications concerning the Post–Preliminary Determination.

We invited parties to comment on the *Preliminary Determination*, *Amended Preliminary Determination*, and Post–Preliminary Determinations. On May 1, 2008, Petitioners, ITW, Xingya Group, Jinhai and Hybest Tools,[10] Xuzhou, Curvet, and Tengyu,[11] Dinglong, Shanxi Pioneer, and Tianjin Couny,[12] and Hilti[13] filed case briefs. On May 8, 2008, Petitioners, ITW, and Xingya Group filed rebuttal briefs. On May 7, 2008, Petitioners and Xingya Group submitted briefs on the Department's targeted dumping methodology and on May 14, 2008, Petitioners, Xingya Group, and ITW submitted rebuttal briefs. Additionally, Dubai Wire filed a public version of its rebuttal briefs to Petitioners' targeted dumping brief on the record of this investigation.[14] We also held a hearing on May 16, 2008, to discuss PRC–specific case issues and on May 19, 2008, we held a joint public hearing on the targeted dumping issues raised in this investigation and *Nails from the UAE*.

On May 6, 2008, National Nail Corp., an importer of subject merchandise, requested that the Department confirm that the scope of this investigation excludes plastic cap roofing nails.[15] The Department rejected this request, and all submissions associated with this request, as untimely. *See* Letter from Irene Darzenta Tzafolias to National Nail Corp., dated June 2, 2008.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Investigation of Certain Steel Nails from the People's Republic of China: Issues and Decision Memorandum,'' dated June 6, 2008, which is hereby adopted by this notice (''Issues and Decision Memorandum''). A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room B–099, and is accessible on the Web at http://www.trade.gov/ia. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination and Amended Preliminary Determination

Based on our analysis of information on the record of this investigation, and comments received from the interested parties, we have made changes to the margin calculations for ITW and Xingya Group. We have revalued several of the surrogate values used in the *Preliminary Determination*. The values that were modified for this final determination are those for surrogate financial ratios, carton, hydrochloric acid, stainless steel wire rod, and the wage rate. For further details see Issues and Decision Memorandum at Comments 11, 14, 16, 18, and 19 and Memorandum to the File from Matthew Renkey, through Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, and James C. Doyle, Director, AD/CVD Operations, Office 9: Certain Steel Nails from the People's Republic of China: Surrogate Values for the Final Determination, dated June 6, 2008 (''Final Surrogate Value Memo'').

In addition, we have made some company–specific changes since the *Preliminary Determination*. Specifically, we have incorporated, where applicable, post–preliminary clarifications based on verification and made certain clerical error corrections for both ITW and Xingya Group. For further details on these company–specific changes, see Issues and Decision Memorandum at Comments 20 and 21.

Scope of Investigation

The merchandise covered by this investigation includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot–dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw–threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this proceeding are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7317.00.55, 7317.00.65 and 7317.00.75.

Excluded from the scope of this proceeding are roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are

[10] Huanghua Jinhai Hardware Products Co., Ltd. (''Jinhai'') and Hybest Tools Group Co., Ltd. (''Hybest Tools'').

[11] Xuzhou CIP International Group Co., Ltd (''Xuzhou''), Shanghai Curvet Hardware Products Co, Ltd (''Curvet''), and Shanghai Tengyu Hardware Tools Co., Ltd. (''Tengyu7rdquo;).

[12] Shandong Dinglong Import & Export Co., Ltd. (''Shandong Dinglong''), Shanxi Pioneer Hardware Industrial Co., Ltd. (''Shanxi Pioneer''), and Tianjin Jinghai County Hongli Industry & Business Co., Ltd. (''Tianjin County'').

[13] Hilti Inc. and Hilti (China) Ltd. (''Hilti).

[14] Dubai Wire resubmitted its rebuttal brief on May 16, 2008, as the Department rejected the original rebuttal brief because it contained arguments that did not address comments made in Petitioners' targeted dumping case brief. *See* Memorandum to The File entitled ''Return of Dubai Wire FZE (Dubai Wire) Rebuttal Brief on Targeted Dumping Issues,'' dated May 16, 2008. Dubai filed the public version of its refiled rebuttal brief on the record of this investigation on May 16, 2008, as well.

[15] The May 6, 2008, submission was filed on the record of the UAE investigation on May 7, 2008. On May 12, 2008, Petitioners submitted a letter for the record of the PRC investigation opposing National Nail Corp.'s exclusion request. This letter was submitted for the record of the UAE investigation on May 27, 2008. National Nail Corp. responded to this letter on May 20, 2008.

specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope of this proceeding are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this proceeding are fasteners suitable for use in powder–actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of this proceeding are thumb tacks, which are currently classified under HTSUS 7317.00.10.00. Also excluded from the scope of this proceeding are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this proceeding are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced–diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas–actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

Banded Brads and Finish Nails

On July 30, 2007,[16] Stanley Fastening Systems, LP (''Stanley''), an interested party in this proceeding, requested that banded brads and finish nails imported with a ''nailer kit'' or ''combo kit''[17] as a single package be excluded from this investigation as being outside the ''class or kind'' of merchandise.[18] Based on the scope exclusion request from Stanley, the fact that Petitioners are in agreement with this request, and there appears to be no impediment to enforceability by CBP, we preliminarily determined that the above–described products are not subject to the scope of this investigation. Since the *Preliminary Determination*, no party to this proceeding has commented on this issue and we have found no additional information that would compel us to reverse our preliminary finding. Thus, for purposes of the final determination, we continue to find that the above–described products are not subject to the scope of this investigation.

Fasteners Suitable for Use in Gas–Actuated Hand Tools

In its case brief filed on April 30, 2008, Hilti, Inc., an interested party in this proceeding, reiterated its request, submitted on January 3, 2008, that the Department modify the scope of the investigation to exclude fasteners suitable for use in gas–actuated hand tools.[19] Hilti claimed that modification of the scope to exclude these fasteners was supported by Petitioners[20] and, additionally, because the description of the excluded nails is framed solely in terms of their physical characteristics, the exclusion would be easily administered by CBP. Furthermore, Hilti pointed out that the principles and rationale the Department applied to Stanley's scope request (*see* discussion above) in the *Preliminary Determination* applied equally to Hilti's scope request. On January 8, 2008, ITW filed comments opposing Hilti's scope request.

Hilti rebutted ITW's January 8, 2008, submission arguing that ITW offered no material reason for seeking the imposition of antidumping duties against the product at issue, other than its assertion that it is a U.S. manufacturer of such merchandise. Moreover, Hilti claimed that ITW has never opposed Petitioners' own initial exclusion of nails suitable for use in powder actuated hand tools, which Hilti claimed are functionally similar and competitive with nails suitable for use in gas–actuated tools, but simply classified under a different HTSUS number.

In its rebuttal brief submitted on May 8, 2008, ITW reiterated its arguments in its January 8, 2008, submission that, because it was the only U.S. producer of the product at issue, Petitioners' agreement to the proposed exclusion was not relevant in light of ITW's opposition. In addition, ITW claimed that it was perfectly reasonable and legitimate for it to oppose a petition generally, while at the same time opposing certain exclusions to that petition.

Based on the scope exclusion request from Hilti, Inc., the fact that Petitioners were in agreement with this request, and that there appeared to be no impediment to enforceability by CBP,[21] we determined that the above–described products were not subject to the scope of this investigation.[22]

Aluminum Nails and Stainless Steel Nails

On February 27, 2008, Duo–Fast Northeast (Duo–Fast), an interested party in this proceeding, requested that the Department exclude two types of nails from the scope of this proceeding: (1) aluminum nails, and (2) stainless steel nails.[23] The plain language of the scope indicates that the scope does not cover aluminum nails because nails made from aluminum are not made from steel and are, thus, not subject merchandise. However, stainless steel nails are explicitly covered in the scope of this proceeding, as the plain language of the scope covers nails produced from any type of steel, without limitation. Therefore, we have not modified the scope of investigation in accordance with Duo–Fast's requests.

Targeted Dumping

We have analyzed the case and rebuttal briefs with respect to targeted dumping issues submitted for the record in this investigation and in *Nails from the UAE.* As a result of our analysis, we made certain changes in the targeted dumping test we applied in the post–preliminary determination for purposes of the final determination. These changes result in a finding of targeted dumping in one region for ITW, but for Xingya Group we find that no customers were targeted. However, as indicated below, ITW's overall margin is *de minimis*, while for Xingya Group, we continue to find an overall dumping margin above *de minmis* as indicated below. For further discussion, see Comments 1 through 9 in the ''Issues and Decision Memorandum''; *see also* ITW Final Analysis Memo; Xingya Group Final Analysis Memos.

[16] This submission was filed on the record of *Nails from the UAE* on July 30, 2007.

[17] A ''nailer kit'' consists of a pneumatic nailer, a ''starter box'' of branded products and a carrying case. A ''combo kit'' consists of an air compressor, a pneumatic nailer, and a ''starter box'' of banded products and related accessories, such as an air hose.

[18] On December 12, 2007, Stanley revised its July 30, 2007, scope exclusion request arguing that its new request reflects a broader exclusion and is easily administered by U.S. Customs and Border Protection (CBP) because the description of the excluded brads and finish nails is framed solely in terms of their physical characteristics.

[19] We stated in the *Preliminary Determination* that we received this request too late to consider for purposes of the preliminary determination, but would consider it for the final determination.

[20] On January 9, 2008, Petitioners filed a letter stating that they agree with Hilti's January 8, 2008, scope exclusion request.

[21] *See* Memorandum to the File from Kate Johnson, Senior Case Analyst, entitled ''Scope Exclusion Request,'' dated May 1, 2008.

[22] While the Department notes ITW's objection, it strives to craft a scope that both includes the specific products for which Petitioners have requested relief, and excludes those products which may fall within the general scope definition, but for which Petitioners do not seek relief.

[23] On March 18, 2008, Petitioners submitted a letter for the record opposing Duo-Fast's exclusion request.

Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (''the Act''), provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party ''promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information,'' the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department ''finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission ..., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' *See also Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA)*, H.R. Rep. No. 103–316, Vol. 1 at 870 (1994).

ITW

For this final determination, in accordance with sections 773(c)(3)(A) and (B) of the Act and section 776(a)(2)(A), (B) and (D) of the Act, we have determined that the use of adverse facts available (''AFA'') is warranted for three unreported materials used by ITW in the production process. *See* Issues and Decision Memorandum at Comment 20E; Paslode Shanghai Verification Report at 10. As partial AFA, we are using the highest single monthly usage rate for each material, by CONNUM, and applying this monthly usage ratio to all months of the POI. *See* ITW Final Analysis Memo for further details on these three unreported materials; *see also* Final Surrogate Value Memo for the surrogate values used to value these materials. We are also applying partial AFA to ITW's indirect labor usage because ITW failed to report all labor involved directly or indirectly with the production of nails. *See* Issues and Decision Memorandum at Comment 20F; Paslode Shanghai Verification Report at Verification Exhibit 18B. As partial AFA, we are taking the highest number of hours worked by an individual classified in the indirect labor category for the month of October verified by the Department and multiplying this by the number of unreported workers and then by the number of months of the POI. The Department will then determine what percentage increase in the overall indirect labor hours these total additional hours constituted and then we will multiply this percentage by the current indirect labor rate in ITW's FOP database in order to ensure that this adverse inference only affects indirect labor hours. *See* ITW Final Analysis Memo.

Xingya Group

For Xingya Group, we also find it appropriate to apply partial AFA for the staples packing FOP in accordance with section 773(c)(3)(B) and sections 776(a)(2)(A), (B), and (D) of the Act, since this packing input was not previously reported to the Department. For sawdust, although this material was identified in Xingya Group's narrative description of the production process, we find that partial AFA is appropriate as this material was never previously reported as an FOP, and the information that Xingya Group had provided about sawdust did not verify. As partial AFA for staples and sawdust, we will use the highest monthly usage observed for the POI, information that we obtained at verification. *See* Issues and Decision Memorandum at Comment 21F; Xingya Group Verification Report at 14.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by ITW, Xingya Group, and one separate rate applicant, Suntec Industries Co., Ltd., for use in our final determination. *See* the Department's verification reports on the record of this investigation in the CRU with respect to ITW, Xingya Group, and Suntec. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) it is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the factors of production. *See Preliminary Determination*. For the final determination, we received no comments and made no changes to our findings with respect to the selection of a surrogate country.

Separate Rates

In proceedings involving non–market-economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by *Notice of Final Determination of Sales at Less Than*

Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''), and Section 351.107(d) of the Department's regulations.

In the *Preliminary Determination*, we found that ITW, Xingya Group, and the separate rate applicants who received a separate rate (''Separate Rate Applicants'') demonstrated their eligibility for separate–rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by ITW, Xingya Group, and the Separate Rate Applicants demonstrate both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation, and, thus are eligible for separate rate status.

Additionally, based on comments received from certain Separate Rate Applicants, verification minor corrections, and a review of the record, we found that the combination rates or the spelling of names for certain exporters were not properly included in the *Preliminary Determination* and/or *Amended Preliminary Determination*. Because these errors pertain to the identification of the proper separate rates recipients for this investigation, the Department is making these corrections effective as of January 23, 2008, the date of the *Preliminary Determination*. Any liquidation instructions for the provisional measures period would reflect these corrections.

The PRC–Wide Rate

In the *Preliminary Determination*, the Department found that certain companies and the PRC–wide entity did not respond to our requests information. In the *Preliminary Determination* we treated these PRC producers/exporters as part of the PRC–wide entity because they did not demonstrate that they operate free of government control over their export activities. No additional information has been placed on the record with respect to these entities after the *Preliminary Determination*. The PRC–wide entity has not provided the Department with the requested information; therefore, pursuant to section 776(a)(2)(A) and (C) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC–wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). *See also*, *SAA* at 870. We determined that, because the PRC–wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC–wide entity.

Because we begin with the presumption that all companies within a NME country are subject to government control and because only the companies listed under the ''Final Determination Margins'' section below have overcome that presumption, we are applying a single antidumping rate – the PRC–wide rate – to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See*, *e.g.*, *Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000). The PRC–wide rate applies to all entries of subject merchandise except for entries from the respondents which are listed in the ''Final Determination Margins'' section below.

Critical Circumstances

In the *Preliminary Determination*, we found that there had been massive imports of the subject merchandise over a relatively short period for Xingya Group and the PRC–wide entity. In addition, we relied on a period of five months as the period, which was the maximum duration for the information we had available at that time, for comparison in preliminarily determining whether imports of the subject merchandise were massive.

For the final determination, however, we collected an additional three months of data from Xingya Group and ITW. After analyzing the additional data, we continue to find that the PRC–wide entity had massive imports of nails over a relatively short period of time. *See* Memorandum to the File from Matthew Renkey, Senior Case Analyst: Critical Circumstances Data for the Final Determination of Antidumping Duty Investigation of Certain Steel Nails from the People's Republic of China, dated June 6, 2008, at Attachment I (''CC MTF'') for the exact percentage changes. Thus, for the final determination we find that Xingya Group did not have massive imports over a relatively short period of time and no longer find critical circumstances for Xingya Group. Additionally, we continue to find that ITW and the Separate Rates Applicants did not have massive imports of nails over a relatively short period of time. *Id.*

Corroboration

At the *Preliminary Determination*, in accordance with section 776(c) of the Act, we corroborated our adverse facts available (''AFA'') margin by comparing the U.S. price and normal values from the petition to the U.S. price and normal values for the respondents. Because no parties challenged calculation of the PRC–wide rate, we continue to find that the margin of 118.04 percent has probative value. *See* Xingya Group Final Analysis Memo at 1. Accordingly, we find that the rate of 118.04 percent is corroborated within the meaning of section 776(c) of the Act.

Final Determination Margins

We determine that the following percentage weighted–average margins exist for the POI:

NAILS FROM THE PRC WEIGHTED–AVERAGE DUMPING MARGINS

Exporter	Producer	Weighted–Average Margin
Paslode Fasteners (Shanghai) Co., Ltd.	Paslode Fasteners (Shanghai) Co., Ltd.	0%
Xingya Group: Suzhou Xingya Nail Co., Ltd, Senco–Xingya Metal Products (Taicang) Co., Ltd., Hong Kong Yu Xi Co., Ltd.	Suzhou Xingya Nail Co., Ltd., Senco–xingya Metal Products (Taicang) Co., Ltd., Wuxi Chengye Metal Products Co., Ltd.	21.24 %
Jisco Corporation	Qingdao Jisco Co., Ltd.	21.24 %
Koram Panagene Co., Ltd.	Qingdao Koram Steel Co., Ltd.	21.24 %
Handuk Industrial Co., Ltd.	Rizhao Handuk Fasteners Co., Ltd.	21.24 %

NAILS FROM THE PRC WEIGHTED–AVERAGE DUMPING MARGINS—Continued

Exporter	Producer	Weighted–Average Margin
Kyung Dong Corp.	Rizhao Qingdong Electric Appliance Co., Ltd.	21.24 %
Xi'an Metals & Minerals Import and Export Co., Ltd.	Huanghua Jinhai Hardware Products Co., Ltd.	21.24 %
Hebei Cangzhou New Century Foreign Trade Co., Ltd.	Huanghua Jinhai Hardware Products Co., Ltd.	21.24 %
Hebei Cangzhou New Century Foreign Trade Co., Ltd.	Beijing Hongsheng Metal Products Co., Ltd.	21.24 %
Hebei Cangzhou New Century Foreign Trade Co., Ltd.	Tianjin Dagang Huasheng Nailery Co., Ltd.	21.24 %
Chongqing Hybest Tools Group Co., Ltd.	Chongqing Hybest Nailery Co., Ltd.	21.24 %
China Silk Trading & Logistics Co., Ltd.	Maanshan Longer Nail Product Co., Ltd.	21.24 %
China Silk Trading & Logistics Co., Ltd.	Wuxi Qiangye Metalwork Production Co., Ltd.	21.24 %
Beijing Daruixing Global Trading Co., Ltd.	Beijing Tri–Metal Co., Ltd.	21.24 %
Beijing Daruixing Global Trading Co., Ltd.	Beijing Daruixing Nail Products Co., Ltd.	21.24 %
Beijing Daruixing Global Trading Co., Ltd.	Tianjin Kunxin Hardware Co., Ltd.	21.24 %
Beijing Daruixing Global Trading Co., Ltd.	Tianjin Hewang Nail Making Factory	21.24 %
Huanghua Jinhai Hardware Products Co., Ltd.	Huanghua Jinhai Hardware Products Co., Ltd.	21.24 %
Beijing Daruixing Nail Products Co., Ltd.	Beijing Daruixing Nail Products Co., Ltd.	21.24 %
Beijing Daruixing Nail Products Co., Ltd.	Beijing Tri–Metal Co., Ltd.	21.24 %
Beijing Tri–Metal Co., Ltd.	Beijing Tri–Metal Co., Ltd.	21.24 %
Beijing Tri–Metal Co., Ltd.	Beijing Daruixing Nail Products Co., Ltd.	21.24 %
Cana (Tianjin) Hardware Ind., Co., Ltd.	Cana (Tianjin) Hardware Ind., Co., Ltd.	21.24 %
China Staple Enterprise (Tianjin) Co., Ltd.	China Staple Enterprise (Tianjin) Co., Ltd.	21.24 %
Hengshui Mingyao Hardware & Mesh Products Co, Ltd.	Hengshui Mingyao Hardware & Mesh Products Co, Ltd.	21.24 %
Nanjing Dayu Pneumatic Gun Nails Co., Ltd.	Nanjing Dayu Pneumatic Gun Nails Co., Ltd.	21.24 %
Qidong Liang Chyuan Metal Industry Co., Ltd.	Qidong Liang Chyuan Metal Industry Co., Ltd.	21.24 %
Romp (Tianjin) Hardware Co., Ltd.	Romp (Tianjin) Hardware Co., Ltd.	21.24 %
Shandong Dinglong Import & Export Co., Ltd.	Qingyun Hongyi Hardware Factory	21.24 %
Tianjin Jinchi Metal Products Co., Ltd.	Tianjin Jinchi Metal Products Co., Ltd.	21.24 %
Tianjin Jurun Metal Products Co., Ltd.	Tianjin Jurun Metal Products Co., Ltd.	21.24 %
Zhejiang Gem–Chun Hardware Accessory Co., Ltd.	Zhejiang Gem–Chun Hardware Accessory Co., Ltd.	21.24 %
Huanghua Xionghua Hardware Products Co., Ltd.	Huanghua Xionghua Hardware Products Co., Ltd.	21.24 %
Zhaoqing Harvest Nails Co., Ltd.	Zhaoqing Harvest Nails Co., Ltd.	21.24 %
SDC International Australia Pty., Ltd.	S–mart Tianjin Technology Development Co., Ltd.	21.24 %
SDC International Australia Pty., Ltd.	Tianjin Jishili Hardware Co., Ltd.	21.24 %
SDC International Australia Pty., Ltd.	Tianjin Baisheng Metal Product Co., Ltd.	21.24 %
SDC International Australia Pty., Ltd.	Tianjin Foreign Trade (Group) Textile & Garment Co., Ltd.	21.24 %
SDC International Australia Pty., Ltd.	Dagang Zhitong Metal Products Co., Ltd.	21.24 %
Tianjin Universal Machinery Imp & Exp Corporation	Huanghua Shenghua Hardware Manufactory Factory	21.24 %
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Dagang Dongfu Metallic Products Co., Ltd.	21.24 %
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Dagang Jingang Nail Factory	21.24 %
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Dagang Linda Metallic Products Co., Ltd.	21.24 %
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Dagang Yate Nail Co., Ltd.	21.24 %
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Jieli Hengyuan Metallic Products Co., Ltd.	21.24 %
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Shishun Metallic Products Co., Ltd.	21.24 %
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Yihao Metallic Products Co., Ltd.	21.24 %
Tianjin Universal Machinery Imp & Exp Corporation	Tianjin Yongcang Metallic Products Co., Ltd.	21.24 %
Certified Products International Inc.	Huanghua Jinhai Hardware Products Co., Ltd.	21.24 %
Certified Products International Inc.	Shanxi Yuci Broad Wire Products Co., Ltd.	21.24 %
Certified Products International Inc.	Hengshui Mingyao Hardware & Mesh Products Co., Ltd.	21.24 %
Certified Products International Inc.	Tianjin Zhonglian Metals Ware Co., Ltd.	21.24 %
Certified Products International Inc.	Beijing Daruixing Nail Products Co., Ltd.	21.24 %
Certified Products International Inc.	Huanghua Xionghua Hardware Products Co., Ltd.	21.24 %
Certified Products International Inc.	Tianjin Port Free Trade Zone Xiangtong Intnl. Industry & Trade Corp.	21.24 %
Certified Products International Inc.	Shandong Dinglong Import & Export Co., Ltd.	21.24 %
Certified Products International Inc.	Wuhu Shijie Hardware Co., Ltd.	21.24 %
Certified Products International Inc.	Romp (Tianjin) Hardware Co., Ltd.	21.24 %
Certified Products International Inc.	Tianjin Jurun Metal Products Co., Ltd.	21.24 %
Certified Products International Inc.	Yitian (Nanjing) Hardware Co., Ltd.	21.24 %
Certified Products International Inc.	Nanjing Da Yu Pneumatic Gun Nails Co., Ltd.	21.24 %
Certified Products International Inc.	Wintime Import & Export Corporation Limited of Zhongshan	21.24 %
Certified Products International Inc.	Tianjin Chentai International Trading Co., Ltd.	21.24 %
Certified Products International Inc.	Tianjin Longxing (Group) Huanyu Imp. & Exp. Co., Ltd.	21.24 %
Certified Products International Inc.	Zhejiang Gem–Chun Hardware Accessory Co., Ltd.	21.24 %
Certified Products International Inc.	Shanxi Pioneer Hardware Industrial Co., Ltd.	21.24 %
Certified Products International Inc.	Wuhu Xin Lan De Industrial Co., Ltd.	21.24 %
Certified Products International Inc.	Tianjin Zhitong Metal Products Co., Ltd.	21.24 %
Certified Products International Inc.	Suntec Industries Co., Ltd.	21.24 %
Certified Products International Inc.	China Staple Enterprise (Tianjin) Co., Ltd.	21.24 %
Certified Products International Inc.	Tianjin Jinghai County Hongli Industry & Business Co., Ltd.	21.24 %

NAILS FROM THE PRC WEIGHTED–AVERAGE DUMPING MARGINS—Continued

Exporter	Producer	Weighted–Average Margin
Certified Products International Inc.	Hebei Super Star Pneumatic Nails Co., Ltd.	21.24 %
Certified Products International Inc.	Shanghai Chengkai Hardware Products Co., Ltd.	21.24 %
Certified Products International Inc.	Tianjin Jinchi Metal Products Co., Ltd.	21.24 %
Certified Products International Inc.	Shaoxing Chengye Metal Producting Co., Ltd.	21.24 %
Certified Products International Inc.	Tianjin Shenyuan Steel Producting Group Co., Ltd.	21.24 %
Certified Products International Inc.	Shanghai Jade Shuttle Hardware Tools Co., Ltd.	21.24 %
Dezhou Hualude Hardware Products Co., Ltd.	Tianjin Bosai Hardware Tools Co., Ltd.	21.24 %
Dezhou Hualude Hardware Products Co., Ltd.	Beijing Yonghongsheng Metal Products Co., Ltd.	21.24 %
Dezhou Hualude Hardware Products Co., Ltd.	Tianjin City Jinchi Metal Products Co., Ltd.	21.24 %
Dezhou Hualude Hardware Products Co., Ltd.	Huanghua Huarong Hardware Products Co., Ltd.	21.24 %
Dezhou Hualude Hardware Products Co., Ltd.	Huanghua Yufutai Hardware Products Co., Ltd.	21.24 %
Dezhou Hualude Hardware Products Co., Ltd.	Qingyuan County Hongyi Hardware Products Factory	21.24 %
Dezhou Hualude Hardware Products Co., Ltd.	Tianjin Zhitong Metal Products Co., Ltd.	21.24 %
Dezhou Hualude Hardware Products Co., Ltd.	Tianjin Baisheng Metal Products Co., Ltd.	21.24 %
Dezhou Hualude Hardware Products Co., Ltd.	Tianjin Dagang Hewang Nails Factory	21.24 %
Shanxi Tianli Industries Co.	Dingzhou Ruili Nail Production Co., Ltd.	21.24 %
Shanxi Tianli Industries Co.	Haixing Hongda Hardware Production Co., Ltd.	21.24 %
Shanxi Tianli Industries Co.	Huanghua Xinda Nail Production Co., Ltd.	21.24 %
Shanxi Tianli Industries Co.	Tianjin Huachang Metal Products Co., Ltd.	21.24 %
Shanxi Tianli Industries Co.	Tianjin Huapeng Metal Company	21.24 %
Shanxi Tianli Industries Co.	Tianjin Huasheng Nails Production Co., Ltd.	21.24 %
Shanxi Tianli Industries Co.	Tianjin Jin Gang Metal Products Co., Ltd.	21.24 %
Shanxi Tianli Industries Co.	Tianjin Kunxin Metal Products Co., Ltd.	21.24 %
Shanxi Tianli Industries Co.	Tianjin Linda Metal Company	21.24 %
Shanxi Tianli Industries Co.	Tianjin Xinyuansheng Metal Products Co., Ltd.	21.24 %
Shanxi Tianli Industries Co.	Tianjin Yongyi Standard Parts Production Co., Ltd.	21.24 %
Shanxi Tianli Industries Co.	Wuqiao Huifeng Hardware Production Co., Ltd.	21.24 %
Suntec Industries Co., Ltd.	Wuqiao County Huifeng Hardware Products Factory	21.24 %
Suntec Industries Co., Ltd.	Wuqiao County Xinchuang Hardware Products Factory	21.24 %
Suntec Industries Co., Ltd.	Huanghua Jinhai Hardware Products Co., Ltd.	21.24 %
Suntec Industries Co., Ltd.	Haixing Linhai Hardware Products Factory	21.24 %
Suntec Industries Co., Ltd.	Tianjin Baisheng Metal Products Co., Ltd.	21.24 %
Suntec Industries Co., Ltd.	Tianjin City Jinchi Metal Products Co., Ltd.	21.24 %
Suntec Industries Co., Ltd.	Tianjin City Dagang Area Jinding Metal Products Factory	21.24 %
Suntec Industries Co., Ltd.	Tianjin Jishili Hardware Products Co., Ltd.	21.24 %
Suntec Industries Co., Ltd.	Tianjin Jietong Hardware Products Co., Ltd.	21.24 %
Suntec Industries Co., Ltd.	Tianjin Ruiji Metal Products Co., Ltd.	21.24 %
Suntec Industries Co., Ltd.	Tianjin Yongxu Metal Products Co., Ltd.	21.24 %
Suntec Industries Co., Ltd.	Wuxi Baolin Nail–Making Machinery Co., Ltd.	21.24 %
Suntec Industries Co., Ltd.	Suzhou Xingya Nail Co., Ltd.	21.24 %
Sinochem Tianjin Imp & Exp Shenzhen Corp.	Tianjin JLHY Metal Products Co., Ltd.	21.24 %
Qingdao D&L Group Ltd.	Tianjin City Daman Port Area Jinding Metal Products Factory	21.24 %
Qingdao D&L Group Ltd.	Tianjin Yongxu Metal Products Co., Ltd.	21.24 %
Qingdao D&L Group Ltd.	Huanghua Jinhai Metal Products Co., Ltd.	21.24 %
Qingdao D&L Group Ltd.	Dong'e Fuqiang Metal Products Co., Ltd.	21.24 %
Tianjin Xiantong Material & Trade Co., Ltd.	Tianjin Xiantong Fucheng Gun Nail Manufacture Co., Ltd.	21.24 %
Zhongshan Junlong Nail Manufactures Co., Ltd.	Zhongshan Junlong Nail Manufactures Co., Ltd.	21.24 %
Shandong Minmetals Co., Ltd.	Shouguang Meiqing Nail Industry Co., Ltd.	21.24 %
Shouguang Meiqing Nail Industry Co., Ltd.	Shouguang Meiqing Nail Industry Co., Ltd.	21.24 %
S–mart (Tianjin) Technology Development Co., Ltd.	Tianjin Jishili Hardware Co., Ltd.	21.24 %
S–mart (Tianjin) Technology Development Co., Ltd.	Tianjin Baisheng Metal Product Co., Ltd.	21.24 %
S–mart (Tianjin) Technology Development Co., Ltd.	Tianjin Dagang Hewang Nail Factory	21.24 %
S–mart (Tianjin) Technology Development Co., Ltd.	Tianjin Shishun Metal Product Co., Ltd.	21.24 %
S–mart (Tianjin) Technology Development Co., Ltd.	Tianjin Xinyuansheng Metal Product Co., Ltd.	21.24 %
Tianjin Lianda Group Co., Ltd.	Tianjin Dagang Hewang Nails Manufacture Plant	21.24 %
Tianjin Lianda Group Co., Ltd.	Tianjin Dagang Jingang Nails Manufacture Plant	21.24 %
Tianjin Lianda Group Co., Ltd.	Tianjin Dagang Longhua Metal Products Plant	21.24 %
Tianjin Lianda Group Co., Ltd.	Tianjin Dagang Shenda Metal Products Co., Ltd.	21.24 %
Tianjin Lianda Group Co., Ltd.	Tianjin Jietong Metal Products Co., Ltd.	21.24 %
Tianjin Lianda Group Co., Ltd.	Tianjin Qichuan Metal Products Co., Ltd.	21.24 %
Tianjin Lianda Group Co., Ltd.	Tianjin Yongxu Metal Products Co., Ltd.	21.24 %
Tianjin Lianda Group Co., Ltd.	Zhangjiagang Longxiang Packing Materials Co., Ltd.	21.24 %
Union Enterprise (Kunshan) Co., Ltd.	Union Enterprise (Kunshan) Co., Ltd.	21.24 %
Beijing Hong Sheng Metal Products Co., Ltd.	Beijing Hong Sheng Metal Products Co., Ltd.	21.24 %
PT Enterprise Inc.	Shanxi Hairui Trade Co., Ltd.	21.24 %
PT Enterprise Inc.	Shanxi Pioneer Hardware Industrial Co., Ltd.	21.24 %
PT Enterprise Inc.	Shanxi Yuci Broad Wire Products Co., Ltd.	21.24 %
Shanxi Hairui Trade Co., Ltd.	Shanxi Pioneer Hardware Industrial Co., Ltd.	21.24 %

NAILS FROM THE PRC WEIGHTED–AVERAGE DUMPING MARGINS—Continued

Exporter	Producer	Weighted–Average Margin
Shanxi Hairui Trade Co., Ltd.	Shanxi Yuci Broad Wire Products Co., Ltd.	21.24 %
Shanxi Pioneer Hardware Industrial Co., Ltd.	Shanxi Pioneer Hardware Industrial Co., Ltd.	21.24 %
Shanxi Yuci Broad Wire Products Co., Ltd.	Shanxi Yuci Broad Wire Products Co., Ltd.	21.24 %
Yitian Nanjing Hardware Co., Ltd.	Yitian Nanjing Hardware Co., Ltd.	21.24 %
Chiieh Yung Metal Ind. Corp.	Cym (Nanjing) Nail Manufacture Co., Ltd.	21.24 %
Shanghai Seti Enterprise International Co., Ltd.	Suzhou Yaotian Metal Products Co. Ltd.	21.24 %
Shanghai Curvet Hardware Products Co., Ltd.	Shanghai Curvet Hardware Products Co., Ltd.	21.24 %
Shanghai Curvet Hardware ProductsCo., Ltd.	Shanghai Tengyu Hardware Tools Co., Ltd.	21.24 %
Shanghai Tengyu Hardware Tools Co., Ltd.	Shanghai Tengyu Hardware Tools Co., Ltd.	21.24 %
Shanghai Tengyu Hardware Tools Co., Ltd.	Shanghai Curvet Hardware Products Co., Ltd.	21.24 %
Xuzhou CIP International Group Co., Ltd.	Xuzhou CIP International Group Co., Ltd.	21.24 %
Xuzhou CIP International Group Co., Ltd.	Qingdao International Fastening Systems Inc.	21.24 %
Wuhu Shijie Hardware Co., Ltd.	Wuhu Shijie Hardware Co., Ltd.	21.24 %
Wuhu Xin Lan De Industrial Co., Ltd.	Wuhu Xin Lan De Industrial Co., Ltd.	21.24 %
Tianjin Zhonglian Metals Ware Co., Ltd.	Tianjin Zhonglian Metals Ware Co., Ltd.	21.24 %
Huarong Hardware Products Co., Ltd.	Huarong Hardware Products Co., Ltd.	21.24 %
Mingguang Abundant Hardware Products Co., Ltd.	Mingguang Abundant Hardware Products Co., Ltd.	21.24 %
Shandong Oriental Cherry Hardware Group Co., Ltd.	Shandong Oriental Cherry Hardware Group Co., Ltd.	21.24 %
Shandong Oriental Cherry Hardware Import and Export Co., Ltd.	Shandong Oriental Cherry Hardware Import and Export Co., Ltd.	21.24 %
Shanghai Chengkai Hardware Product. Co., Ltd.	Shanghai Chengkai Hardware Product. Co., Ltd.	21.24 %
Shanghai Jade Shuttle Hardware Tools Co., Ltd.	Shanghai Jade Shuttle Hardware Tools Co., Ltd.	21.24 %
Shanghai Yueda Nails Industry Co., Ltd.	Shanghai Yueda Nails Industry Co., Ltd.	21.24 %
Besco Machinery Industry (Zhejiang) Co., Ltd.	Besco Machinery Industry (Zhejiang) Co., Ltd.	21.24 %
The Stanley Works (Langfang) Fastening Systems Co., Ltd.	The Stanley Works (Langfang) Fastening Systems Co., Ltd.	21.24 %
Guangdong Foreign Trade Import & Export Corporation	Shanghai Nanhui Jinjun Hardware Factory	21.24 %
Tianjin Jinghai County Hongli Industry and Business Co., Ltd.	Tianjin Jinghai County Hongli Industry and Business Co., Ltd.	21.24 %
PRC–Wide Rate		118.04 %

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of subject merchandise from the Separate Rate Applicants entered, or withdrawn from warehouse, for consumption on or after January 23, 2008, the date of publication of the *Preliminary Determination*. CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above.

The Department continues to find that critical circumstances exist for the PRC–wide entity and therefore we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from the PRC–wide entity entered, or withdrawn from warehouse, for consumption on or after October 25, 2007, which is 90 days prior to the date of publication of the preliminary determination. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. These instructions suspending liquidation will remain in effect until further notice.

In accordance with the preliminary affirmative determination of critical circumstances, we instructed CBP to suspend liquidation of all entries of the subject merchandise from Xingya Group, which were entered or withdrawn from warehouse, on or after October 25, 2007, which is 90 days prior to January 23, 2008, the date of publication of the Preliminary Determination in the **Federal Register**. Because we do not find critical circumstances for Xingya Group in this final determination, we will instruct CBP to terminate suspension of liquidation, and release any cash deposits or bonds, on imports during the 90 day period prior to the date of publication of the Preliminary Determination.

Because the Department found that the weighted–average dumping margin for subject merchandise produced and exported by Paslode Shanghai is *de minimis*, the Department will instruct CBP not to suspend liquidation of any entries of nails from the PRC as described in the ''Scope of Investigation'' section that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Department will not require any cash deposit or posting of a bond for ITW when the subject merchandise is produced and exported by Paslode Shanghai. Accordingly, we will direct CBP to terminate the suspension of liquidation for shipments of nails entered, or withdrawn from warehouse, for consumption on or after January 23, 2008, the date of publication o the *Preliminary Determination*. These suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for

importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 6, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Targeted Dumping:

Comment 1: Appropriateness of Implementing New Methodology in These Investigations
Comment 2: Identifying Alleged Targets
Comment 3: Statistical Validity of Standard Deviation Test
Comment 4: Reliance on Identical Product Comparisons for Determining Targeted Dumping
Comment 5: Alleged Masking of Dumping Under 33% Pattern Test Threshold

Comment 6: Flaws of ''Gap Test''
Comment 7: Alleged Masking of Dumping by Respondents Under Standard Deviation Test
Comment 8: Statistical Validity of P/2 Test

Comment 9: Programming Errors

Surrogate Values:

Comment 10: Wire Rod Surrogate Value
Comment 11: Surrogate Companies
Comment 12: Scrap Surrogate Value
Comment 13: Sigma Cap for Wire Rod
Comment 14: Carton Surrogate Value
Comment 15: Tape Surrogate Value
Comment 16: Wage Rate
Comment 17: Wire Drawing Powder Surrogate Value
Comment 18: Hydrochloric Acid Surrogate Value
Comment 19: Stainless Steel Wire Rod Surrogate Value

Company Specific Comments:

Comment 20: ITW

A. Database Use

B. Indirect Selling Expense Calculation

C. Interest Expense

D. Exclusion of Selling Expenses from SG&A Ratio

E. Possible Unreported Factors of Production

F. Unreported Indirect Labor Hours

G. Unreported Market–Economy Purchases

Comment 21: Xingya Group

A. Market Economy Ocean Freight

B. Partial AFA for Certain CEP Expenses Reported by Ominfast, Partial AFA for Senco's Advertising Expenses, and Incorporation of Corrections for USBROKU, USDUTYU and EARLPYU

C. Senco's Indirect Selling Expenses

D. Application of Total AFA or an Intermediate Input Methodology to Xingya Group Due to the Misreporting of Its Production Process

E. SXNC's Purchases of Collating Paper

F. Partial AFA for Certain Misreported and Unreported SXNC Factors of Production

G. Critical Circumstances

Separate Rate Applicants:

Comment 22: Misidentification of Separate Rate Recipients

Comment 23: Separate Rate Calculation

[FR Doc. E8–13474 Filed 6–13–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–520–802)

Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value

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

SUMMARY: We determine that certain steel nails (nails) from the United Arab Emirates (UAE) are not being, or are not likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at not LTFV are shown in the ''Final Determination'' section of this notice.

EFFECTIVE DATE: June 16, 2008.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Kate Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 23, 2008, the Department published in the **Federal Register** the preliminary determination of sales at LTFV in the antidumping duty investigation of nails from the UAE. *See Certain Steel Nails From the United Arab Emirates: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 3945 (January 23, 2008) (*Preliminary Determination*).

In the *Preliminary Determination*, based on our examination of the petitioners'[1] targeted dumping allegation filed on October 26, 2007, we preliminarily determined that there is a pattern of export prices for comparable merchandise that differs significantly among purchasers. Therefore, based on the petitioners' allegation, we conducted an analysis to determine whether targeted dumping occurred. The Department further stated that it was in the process of re–assessing the framework and standards for both

[1] The petitioners are: Mid Continent Nail Corporation; Davis Wire Corporation; Gerdau Ameristeel Corporation (Atlas Steel & Wire Division); Maze Nails (Division of W.H. Maze Company); Treasure Coast Fasteners, Inc.; and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

targeted dumping allegations and targeted dumping analyses, and that it intended to develop a new framework in the context of this proceeding. We invited comments regarding certain principles involved in targeted dumping allegations and analyses. Accordingly, we received comments from the petitioners and the respondent Dubai Wire FZE/Global Fasteners Ltd (Dubai Wire) on February 15, 2008. These parties submitted rebuttal comments on March 10, 2008.

From March 3 through March 12, 2008, we verified the constructed value (CV) and sales questionnaire responses of Dubai Wire. On March 31 and April 1, 2008, we issued the CV and sales verification reports, respectively. *See* Memorandum to the File entitled ''Verification of the Cost Response of Dubai Wire FZE in the Antidumping Investigation of Certain Steel Nails from the UAE,'' dated March 31, 2008 (CVR), and Memorandum to the File entitled ''Verification of the Sales Response of Dubai Wire FZE and Its Affiliate Global Fasteners Ltd in the Antidumping Investigation of Certain Steel Nails from the United Arab Emirates,'' dated April 1, 2008 (SVR).

On April 21, 2008, the Department issued a decision memorandum in this investigation and the companion investigation on nails from the People's Republic of China (PRC) (*Nails from the PRC*), in which the Department described the application of a new methodology to analyze targeted dumping. Based on this analysis, the Department did not find a pattern of export prices for identical merchandise that differed significantly among purchasers. *See* Memorandum to David Spooner, Assistant Secretary for Import Administration, entitled ''Post–Preliminary Determinations on Targeted Dumping,'' dated April 21, 2008; and Memorandum to James Maeder, Director, AD/CVD Operations, Office 2, entitled ''Post–Preliminary Determination on Targeted Dumping: Results for Dubai Wire FZE/Global Fasteners Ltd,'' dated April 21, 2008. As a result, we applied the average–to-average methodology to all U.S. sales and found a *de minimis* margin (0.09 percent) for Dubai Wire. On April 24, 2008, the Department issued a letter to all parties in the two investigations providing clarifications concerning the post–preliminary determinations.

On April 30, 2008, the petitioners and Hilti, Inc. (Hilti), an importer of the subject merchandise, filed case briefs. Dubai Wire filed a case brief on May 1, 2008. On May 7, 2008, the petitioners and Dubai Wire filed rebuttal briefs.

On May 6, 2008, National Nail Corp., an importer of subject merchandise in *Nails from the PRC*, requested that the Department confirm that the scope of this investigation excludes plastic cap roofing nails.[2] The Department rejected this request, and all submissions associated with this request, as untimely filed on June 2, 2008. *See* Letter from Irene Darzenta Tzafolias to White and Case, dated June 2, 2008.

On May 15, 2008, Illinois Tool Works, Inc. and Paslode Fasteners (Shanghai) Co., Ltd. (collectively, ITW) submitted the public version of their scope arguments contained in the public version of ITW's rebuttal brief filed on May 8, 2008, in *Nails from the PRC. See* ''Scope Comments'' section, below.

As the Department established a separate briefing schedule on targeted dumping issues, the petitioners and Suzhou Xingya Nail Co., Ltd., Senco–Xingya Metal Products (Taicang) Co., Ltd., Senco Products, Inc., and Omnifast LLC (collectively, Xingya Group), a respondent in *Nails from the PRC*, submitted case briefs with respect to these issues on May 7, 2008.[3] On May 14, 2008, the Xingya Group, ITW, and Dubai Wire submitted rebuttal briefs to the petitioners' targeted dumping brief.[4] On May 19, 2008, we held a joint public hearing on the targeted dumping issues raised in this investigation and *Nails from the PRC*.

Period of Investigation

The period of investigation (POI) is April 1, 2006, through March 31, 2007. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, May 2007).

Scope of Investigation

The merchandise covered by this investigation includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot–dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw–threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this proceeding are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65 and 7317.00.75.

Excluded from the scope of this proceeding are roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope of this proceeding are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this proceeding are fasteners suitable for use in powder–actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of this proceeding are thumb tacks, which are currently classified under HTSUS 7317.00.10. Also excluded from the scope of this proceeding are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this proceeding are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or

[2] The May 6, 2008, submission was filed on the record of the UAE investigation on May 7, 2008. On May 12, 2008, the petitioners submitted a letter for the record of the PRC investigation opposing National Nail Corp.'s exclusion request. This letter was submitted for the record of the UAE investigation on May 27, 2008. National Nail Corp. responded to this letter on May 20, 2008.

[3] The public version of Xingya Group's brief was submitted for the record of this investigation on May 12, 2008.

[4] Dubai Wire resubmitted its rebuttal brief on May 16, 2008, as the Department rejected the original rebuttal brief because it contained arguments that did not address comments made in the petitioners' targeted dumping case brief. *See* Memorandum to The File entitled ''Return of Dubai Wire FZE (Dubai Wire) Rebuttal Brief on Targeted Dumping Issues,'' dated May 16, 2008. The public versions of the petitioners' and ITW's targeted dumping rebuttal briefs filed in Nails from the PRC were submitted to this record on May 15, 2008.

equal to 0.5 percent, a round head, a secondary reduced–diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas–actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

Banded Brads and Finish Nails

On July 30, 2007,[5] Stanley Fastening Systems, LP (Stanley), an interested party in this proceeding, requested that banded brads and finish nails imported with a ''nailer kit'' or ''combo kit'' as a single package be excluded from this investigation as being outside the ''class or kind''[6] of merchandise.[7] Based on the scope exclusion request from Stanley, the fact that the petitioners are in agreement with this request, and that there appears to be no impediment to enforceability by CBP, we preliminarily determined that the above–described products are not subject to the scope of this investigation. Since the *Preliminary Determination*, no party to this proceeding has commented on this issue and we have found no additional information that would compel us to reverse our preliminary finding. Thus, for purposes of the final determination, we continue to find that the above–described products are not subject to the scope of this investigation.

Fasteners Suitable for Use in Gas–Actuated Hand Tools

In its case brief filed on April 30, 2008, Hilti, an interested party in this proceeding, reiterated its request, submitted on January 8, 2008, that the Department modify the scope of the investigation to exclude fasteners suitable for use in gas–actuated hand tools.[8] Hilti claimed that modification of the scope to exclude these fasteners was supported by the petitioners[9] and, additionally, because the description of the excluded nails is framed solely in terms of their physical characteristics, the exclusion could be easily administered by CBP. Furthermore, Hilti pointed out that the principles and rationale the Department applied to Stanley's scope request (see discussion above) in the *Preliminary Determination* applied equally to Hilti's scope request.

Hilti rebutted ITW's January 8, 2008, submission arguing that ITW offered no material reason for seeking the imposition of antidumping duties against the product at issue, other than its assertion that it is a U.S. manufacturer of such merchandise. Moreover, Hilti claimed that ITW has never opposed the petitioners' own initial exclusion of nails suitable for use in powder- actuated hand tools, which Hilti claimed are functionally similar and competitive with nails suitable for use in gas–actuated tools, but simply classified under a different HTSUS subheading.

In its rebuttal brief submitted on May 8, 2008, in *Nails from the PRC*,[10] ITW reiterated its arguments in its January 8, 2008, submission that, because it is the only U.S. producer of the product at issue, the petitioners' agreement to the proposed exclusion is not relevant in light of ITW's opposition. In addition, ITW claimed that it is perfectly reasonable and legitimate for it to oppose a petition generally, while at the same time opposing certain exclusions to that petition.

Based on the scope exclusion request from Hilti, the fact that the petitioners are in agreement with this request, and that there appears to be no impediment to enforceability by CBP,[11] we have determined that the above–described products are not subject to the scope of this investigation.[12]

Aluminum Nails and Stainless Steel Nails

On February 27, 2008, Duo–Fast Northeast (Duo–Fast), an interested party in this proceeding, requested that the Department exclude two types of nails from the scope of this proceeding: (1) aluminum nails, and (2) stainless steel nails.[13] The plain language of the scope indicates that the scope does not cover aluminum nails because nails made from aluminum are not made from steel and are, thus, not subject merchandise. However, stainless steel nails are explicitly covered in the scope of this proceeding, as the plain language of the scope covers nails produced from any type of steel, without limitation. Therefore, we have not modified the scope of investigation in accordance with Duo–Fast's requests.

Targeted Dumping

We have analyzed the case and rebuttal briefs with respect to targeted dumping issues submitted for the record in this investigation and in *Nails from the PRC*. As a result of our analysis, we made certain changes in the targeted dumping test we applied in the post–preliminary determination for purposes of the final determination. These changes continued to result in a negative targeted dumping finding for Dubai Wire. For further discussion, see Comments 1 through 9 in the ''Issues and Decision Memorandum'' (*Decision Memo*) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated June 6, 2008, which is hereby adopted by this notice. See also Memorandum to The File entitled ''Dubai Wire FZE/Global Fasteners Ltd. Final Determination Margin Calculation,'' dated June 6, 2008.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by the parties to this investigation are addressed in the *Decision Memo*. A list of the issues that parties have raised and to which we have responded, all of which are in the *Decision Memo*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 1117 of the main Department building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

[5] This submission was filed on the record of Nails from the PRC on July 30, 2007, and on the record of the instant investigation on January 7, 2008.

[6] A ''nailer kit'' consists of a pneumatic nailer, a ''starter box'' of branded products and a carrying case. A ''combo kit'' consists of an air compressor, a pneumatic nailer, and a ''starter box'' of banded products and related accessories, such as an air hose.

[7] On December 12, 2007, Stanley revised its July 30, 2007, scope exclusion request arguing that its new request reflects a broader exclusion and could be easily administered by U.S. Customs and Border Protection (CBP) because the description of the excluded brads and finish nails is framed solely in terms of their physical characteristics.

[8] We stated in the *Preliminary Determination* that we received this request too late to consider for purposes of the preliminary determination, but would consider it for the final determination.

[9] On January 9, 2008, the petitioners filed a letter stating that they agree with Hilti's January 8, 2008, scope exclusion request.

[10] This brief was submitted for the UAE record on May 15, 2008.

[11] *See* Memorandum to the File from Kate Johnson, Senior Case Analyst, entitled ''Scope Exclusion Request,'' dated May 1, 2008.

[12] While the Department notes ITW's objection, it strives to craft a scope that both includes the specific products for which the petitioners have requested relief, and excludes those products which may fall within the general scope definition, but for which the petitioners do not seek relief.

[13] On March 18, 2008, the petitioners submitted a letter for the record opposing Duo-Fast's exclusion request.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information submitted by Dubai Wire for use in our final determination. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by Dubai Wire. *See* CVR and SVR.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculation for Dubai Wire. For a discussion of these changes, see the ''Margin Calculations'' section of the Decision Memo.

Final Determination Margins

We determine that the weighted–average dumping margins are as follows:

%	Weighted–Average Margin Percentage
Dubai Wire FZE/Global Fasteners Ltd.	0.00
All Others	0.00

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Termination of Suspension of Liquidation

Because the estimated weighted–average dumping margin for the sole investigated company is 0.00 percent (*de minimis*), we will direct CBP to terminate the suspension of liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after January 23, 2008, and to release any bond or other security, and refund any cash deposit.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination.

Return or Destruction of Proprietary Information

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

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: June 6, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix - Issues in Decision Memorandum

Targeted Dumping Issues

Comment 1: Appropriateness of Implementing New Methodology in this Investigation

Comment 2: Identifying Alleged Targets

Comment 3: Statistical Validity of Standard Deviation Test

Comment 4: Reliance on Identical Products for Determining Targeted Dumping

Comment 5: Alleged Masking of Dumping Under 33–Percent Pattern Test Threshold

Comment 6: Flaws of ''Gap Test≥

Comment 7: Alleged Masking of Dumping by Respondents Under Standard Deviation Test

Comment 8: Statistical Validity of P/2 Test

Comment 9: Programming Errors

Company–Specific Calculation Issues

Comment 10: Addition of G&A, Financial and Selling Expenses to GFL Processing Costs

Comment 11: Weight–Averaging of Dubai Wire and GFL Expenses for G&A and Financial Expense Ratios

Comment 12: Scrap Offset Revisions

Comment 13: Affiliated Party Loans and Leases

Comment 14: Calculation of Financial Expense Offset

Comment 15: Adjustment of GFL CV Profit Ratio for COM Revisions

Comment 16: Calculation of CV Selling Expenses and Profit Based on GFL Screw Sales

Comment 17: LOT Adjustment for CV Comparisons

[FR Doc. E8–13490 Filed 6–13–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–865

Final Rescission of Antidumping Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from the People's Republic of China

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

EFFECTIVE DATE: June 16, 2008.

FOR FURTHER INFORMATION CONTACT: Toni Dach or Scot Fullerton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1655 and (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2007, the Department of Commerce (''Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from the People's Republic of China (''PRC'') for the period of review (''POR'') November 1, 2006, through October 31, 2007. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 72 FR 61859 (November 1, 2007). On November 30, 2007, Nucor Corporation (''Petitioner''), a domestic producer of certain hot–rolled carbon steel flat products, requested that the Department conduct an administrative review of Baosteel Group Corporation, Shanghai Baosteel International Economic & Trading Co., Ltd., and Baoshan Iron and Steel Co., Ltd. (collectively ''Baosteel''). On December 27, 2007, the Department published a notice of initiation of an antidumping duty administrative review on certain hot–rolled carbon steel flat products from the PRC. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, (''Notice of Initiation''), 72 FR 73315 (December 27, 2007).

On April 14, 2008, we preliminarily rescinded this review based on evidence on the record indicating that there were no entries into the United States. *See Preliminary Rescission of Antidumping Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products From The People's Republic of China, (''Preliminary Rescission'')*, 73 FR 20021 (April 14, 2008). We invited interested parties to submit comments on our

Preliminary Rescission. We did not receive any comments on our Preliminary Rescission.

Scope of the Review

For purposes of this review, the products covered are certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review.

Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and, iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:
1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:
. Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (''ASTM'') specifications A543, A387, A514, A517, A506).
. Society of Automotive Engineers (''SAE'')/American Iron & Steel Institute (''AISI'') grades of series 2300 and higher.

. Ball bearing steels, as defined in the HTSUS.

. Tool steels, as defined in the HTSUS.
. Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
. ASTM specifications A710 and A736.
. USS abrasion–resistant steels (USS AR 400, USS AR 500).
. All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
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Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under review is dispositive.

Period of Review

The POR is November 1, 2006, through October 31, 2007.

Final Rescission of Review

Because there is no information on the record which indicates that Baosteel made sales to the United States of subject merchandise during the POR, and because we did not receive any comments on our *Preliminary Rescission*, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding this review of the antidumping duty order on certain hot–rolled carbon steel flat products from the PRC for the period of November 1, 2006, to October 31, 2007.[1] The cash deposit rate for Baosteel will continue to be the rate established in the most recently completed segment of this proceeding.

This notice is in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 9, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–13487 Filed 6–13–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber From the Republic of Korea

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

SUMMARY: The Department of Commerce (''Department'') received a request for

[1] See, e.g, Stainless Steel Sheet and Strip in Coils from Japan; Final Rescission of Antidumping Duty Administrative Review, 71 FR 26041 (May 3, 2006).

initiation of a changed circumstances review of the antidumping duty order on polyester staple fiber (''PSF'') from the Republic of Korea (''Korea'') from Woongjin Chemical Co. Ltd. (''Woongjin''). After reviewing this request, we preliminarily determine that Woongjin is the successor-in-interest to Saehan Industries Inc. (''Saehan''), and as a result, should be accorded the same treatment previously accorded Saehan with regard to the antidumping duty order on PSF from Korea. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 16, 2008.

FOR FURTHER INFORMATION CONTACT: Devta Ohri, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–3853.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2000, the Department of Commerce issued an antidumping duty order on certain PSF from Korea. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Polyester Staple Fiber from Republic of Korea*, 65 FR 33807 (May 25, 2000).

On April 23, 2008, Woongjin requested that the Department initiate a changed circumstances review of the antidumping duty order on PSF from Korea to determine that, for purposes of the antidumping law, Woongjin is the successor-in-interest to Saehan. See April 23, 2008, letter from Woongjin.

Saehan was a producer and exporter of PSF from Korea that participated in the administrative review covering the period May 1, 2002, through April 30, 2003. As a result of this review, Saehan received a cash deposit rate of 2.13 percent. *See Certain Polyester Staple Fiber From Korea: Final Results of Antidumping Duty Administrative Review and Final Determination To Revoke the Order in Part,* 69 FR 61341 (October 18, 2004); amended by *Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from Korea*, 69 FR 67891 (November 22, 2004). Saehan has not participated in any other administrative reviews of PSF from Korea.

Scope of the Review

For the purposes of this order, the product covered is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 5503.20.00.25 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from this order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Initiation and Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.216, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In this case, the Department finds that the information submitted by the respondent provides sufficient evidence of changed circumstances to warrant a review to determine whether Woongjin is the successor-in-interest to Saehan. Thus, in accordance with section 751(b) of the Act, the Department is initiating a changed circumstances review to determine whether Woongjin is the successor-in-interest to Saehan for purposes of determining antidumping duty liability with respect to imports of PSF from Korea.

Furthermore, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notice of initiation of a changed circumstances review and the notice of preliminary results in a single notice if the Department concludes that expedited action is warranted. In this case, we find that the evidence provided by Woongjin is sufficient to preliminarily determine that its change of corporate name from Saehan to Woongjin, resulting from a change in stock ownership along with a change of some of the board of directors, did not affect the company's operations.

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan,* 67 FR 58 (January 2, 2002); *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review,* 57 FR 20460, 20462 (May 13, 1992). While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 9979 (March 1, 1999); *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review,* 59 FR 6944 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

In accordance with 19 CFR 351.221(c)(3)(ii), we preliminarily determine that Woongjin is the successor-in-interest to Saehan. In its April 23, 2008 submission, Woongjin provided evidence supporting its claim to be the successor-in-interest to Saehan. Documentation attached to Woongjin's April 23, 2008, submission shows that the purchase of 50 percent of Saehan's shares by the Woongjin Group, and the subsequent name change to Woongjin resulted in little or no change in management, production facilities, supplier relationships, or customer base. This documentation consists of:

(1) A list of major shareholders along with their percentage holdings before and after the name change;

(2) A list of the board of directors before and after the name change

demonstrating that those members of the board involved in the day-to-day activities of the company, including the President, the Business Administration Division Director, and the Auditor, have all remained the same;

(3) Saehan shareholder meeting minutes regarding the name change;

(4) Saehan's and Woongjin's business registration certificate which demonstrates that despite the name change, the business registration number remained the same;

(5) Certificate of corporate registration that demonstrated the name change from Saehan to Woongjin;

(6) Announcement to Saehan's customers of the name change;

(7) Corporate organizational charts demonstrating that the organizational structure remained unchanged despite the name change;

(8) Organizational charts of the PSF production and sales divisions demonstrating that the organizational structure remained unchanged before and after the name change;

(9) Woongjin's Internet Web site demonstrating that Saehan is now Woongjin;

(10) A list of suppliers before and after the name change demonstrating that Woongjin has maintained Saehan's supplier relationships with only some minor variations (which Woongjin explains are due to timing changes and normal business turnover); and

(11) A list of customers before and after the name change demonstrating that Woongjin has maintained Saehan's customer base with only some minor variations (which Woongjin explains are due to timing changes and normal business turnover).

The documentation described above demonstrates that there was little or no change in management structure, supplier relationships, production facilities, or customer base. Therefore, we determine that expedited action is warranted and we preliminarily find that Woongjin is the successor-in-interest to Saehan and, thus, should receive the same antidumping duty treatment with respect to PSF from Korea. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held no later than 44 days after the date of publication of this notice, or the first workday thereafter. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing.

Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. The Department will publish the final results of this changed circumstances review, in accordance with 19 CFR 351.216(e).

The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

We are issuing and publishing these results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and 19 CFR 351.216.

Dated: June 6, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–13506 Filed 6–13–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–822

Helical Spring Lock Washers from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: June 16, 2008.

FOR FURTHER INFORMATION CONTACT: Devta Ohri, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3853.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 1993, the Department published the antidumping duty order on certain helical spring lock washers (''HSLW'') from the People's Republic of China (''PRC''), as amended on November 23, 1993. *See Antidumping Duty Order: Certain Helical Spring Lock Washers From the People's Republic of China*, 58 FR 53914 (October 19, 1993), and *Amended Final Determination and Amended Antidumping Duty Order: Certain Helical Spring Lock Washers From the People's Republic of China*, 58 FR 61859 (November 23, 1993). On November 26, 2007, the Department initiated an administrative review of Hangzhou Spring Washer Co., Ltd. (also known as Zhejiang Wanxin Group, Ltd.) (''HSW'' or ''Respondent''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 65938 (November 26, 2007). On May 15, 2008, both HSW and Shakeproof Assembly Components Division of Illinois Tool Works Inc. (''Shakeproof'' or ''Petitioner'') requested that the Department exercise its discretion and extend the deadline for withdrawal of administrative review beyond 90 days, thereby allowing both HSW's and Shakeproof's May 15, 2008, withdrawal requests to be considered timely.

Scope of the Order

The products covered by the order are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat–treated or non–heat-treated, plated or non–plated, with ends that are off–line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to the order are currently classifiable under subheading 7318.21.0030 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. Both HSW and Shakeproof withdrew their requests for review on May 15, 2008, which is after the 90-day deadline. Nonetheless, the Department accepts the withdrawal requests because it has not yet expended

significant resources on this review. Therefore, the Department is rescinding the administrative review of HSW covering the period October 1, 2006 through September 30, 2007.

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (''CBP'') 15 days after publication of this rescission notice. The Department will instruct CBP to assess antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

Notification Regarding Administrative Protective Orders

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

This notice is published in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 10, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–13494 Filed 6–13–08; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Entry of Shipments of Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Apparel in Excess of U.S. - China Bilateral Textile Agreement Limits for 2008.

June 11, 2008.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

This notice serves to remind interested parties that charges against the limits subject to the U.S. - China Bilateral Textile Agreement signed on November 8, 2005 (the Agreement) are by date of export and not date of entry. A properly completed electronic visa (ELVIS) transmission will be required for all shipments exported prior to January 1, 2009 that are subject to Agreement limits, regardless of the date of entry into the United States. Shipments exported in 2008 in excess of agreed limits are in violation of the terms of the Agreement. Shipments exported from China on and after January 1, 2009 will not require an ELVIS transmission.

The purpose of this notice is to advise the public that CITA reserves the right to permanently deny entry to or to stage entry to goods that have been shipped in excess of the 2008 limits under the Agreement. Overshipments of merchandise subject to the Agreement shall be subject to delayed and staged entry, in a manner similar to the procedures followed for overshipments of 2005 China textile safeguard limits, as published in the Federal Register Notice on December 5, 2005 (70 FR 72427). Any overshipments of the 2008 limits of the Agreement shall be subject to the following procedures:

1. Entry will not be allowed until one month after the expiration date of the agreement limit. Therefore entry will not be allowed until February 1, 2009.

2. At that time, only 5 percent of the 2008 base limit will be allowed entry for a one month period beginning on that date.

3. An additional 5 percent will be allowed entry monthly until all overshipments are allowed entry.

CITA will publish a notice and directive to U.S. Customs and Border Protection (CBP) later this year indicating the categories involved in staged entry and the 5 percent quantities to be allowed in monthly beginning February 1, 2009.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–13482 Filed 6–13–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Feasibility of a Reciprocal Defense Procurement Memorandum of Understanding With Poland

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Request for industry feedback regarding experience in public (particularly defense) procurements conducted by the Republic of Poland.

SUMMARY: DoD is soliciting information from U.S. industry that has had experience participating in public defense procurements conducted by or on behalf of Poland's Ministry of National Defense or Armed Forces. DoD is considering the possibility of negotiating a Reciprocal Defense Procurement Memorandum of Understanding (RDP MOU) with Poland. The contemplated MOU would involve reciprocal waivers of buy-national laws by each country. This would mean that Poland would be added to the list of ''qualifying countries'' in the Defense Federal Acquisition Regulation Supplement (DFARS), and that offers of products of Poland would be exempt from the U.S. Buy American Act and Balance of Payments Program policy that would otherwise require DoD to add 50 percent to the price of the foreign products when evaluating offers. This also means that U.S. products should be exempt from any analogous ''Buy Polish'' law or policy applicable to Poland's defense procurements. DoD is interested in industry comments relating to the transparency, integrity, and general fairness of Poland's public (defense) procurement processes. DoD is also interested in comments relating to the degree of reciprocity that exists between the United States and Poland when it comes to the openness of defense procurements to offers of products of the other country.

DATES: Comments, which will be treated in a confidential manner, must be received by July 16, 2008.

ADDRESSES: You may submit comments to: Office of the Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, ATTN: OUSD (AT&L) DPAP (CPIC), 3060 Defense Pentagon, Washington, DC 20301–3060; or by e-mail to *barbara.glotfelty@osd.mil*.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Glotfelty, telephone 703–697–9351.

SUPPLEMENTARY INFORMATION: The RDP MOUs that DoD has entered into with 21 countries are signed by the Secretary of Defense and his counterpart. The purpose of these MOUs is to promote rationalization, standardization, and interoperability of defense equipment with allies and friendly governments. It provides a framework for ongoing communication regarding market access and procurement matters that affect effective defense cooperation. Based on the RDP MOU, each country affords the other certain benefits on a reciprocal basis, consistent with national laws and regulations. For 19 of the 21 MOU countries, these include evaluation of offers without applying price differentials under ''Buy National'' laws (e.g., the Buy American Act), and making provision for duty-free entry of goods delivered under covered contracts.

Poland is a North Atlantic Treaty Organization Ally of the United States.

The countries with which DoD has RDP MOUs are identified in DFARS 225.872–1. Should an RDP MOU be concluded with Poland, Poland would be added to the list of qualifying countries. If, based on and in conjunction with the RDP MOU, DoD determines that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act to the acquisition of Polish defense equipment and supplies, Poland would be listed in DFARS 225.872–1(a). If a determination will be made on a purchase-by-purchase basis, Poland would be listed in DFARS 225.872–1(b).

RDP MOUs generally include language by which the parties agree that their procurements will be conducted in accordance with certain implementing procedures. These procedures include publication of notices of proposed purchases; the content and availability of solicitations for proposed purchases; notification to each unsuccessful offeror; feedback, upon request, to unsuccessful offerors concerning the reasons they were not allowed to participate in a procurement or were not awarded a contract; and providing for the hearing and review of complaints arising in connection with any phase of the procurement process to ensure that, to the extent possible, complaints are equitably and expeditiously resolved between an offeror and the procuring activity.

While DoD is evaluating Poland's laws and regulations in this area, DoD would benefit from knowledge of U.S. industry experience in participating in Poland's public defense procurements. DoD is, therefore, asking U.S. firms that have participated or attempted to participate in procurements by or on behalf of Poland's Ministry of National Defense or Armed Forces to provide input as to whether the procurements were conducted in accordance with published procedures with fairness and due process and, if not, the nature of the problems encountered. All comments received will be treated as confidential submissions.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E8–13458 Filed 6–13–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Reinstitution of Small Business Set-Asides for Certain Acquisitions Under the Small Business Competitiveness Demonstration Program

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice of reinstitution of small business set-asides under the Small Business Competitiveness Demonstration Program.

SUMMARY: The Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing has reinstituted the use of small business set-aside procedures for solicitations issued under the Designated Industry Groups (DIGs), including Construction (except dredging), Subsector 236—Construction of Buildings; non-nuclear ship repair acquisitions conducted by the Department of the Navy under North American Industry Classification System (NAICS) Code 3366111, Product or Service Code J999 (West Coast only); Architect and Engineering Services (including Surveying and Mapping); and Refuse Systems and Related Services. The Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing has also reinstituted the use of small business set-aside procedures for construction solicitations issued under specific construction NAICS codes for the Army, the Navy, the Air Force, the Defense Logistics Agency, the Defense Information Systems Agency, the Defense Threat Reduction Agency, the Defense Education Activity, and the U.S. Special Operations Command. This action is required under the Small Business Competitiveness Demonstration Program because DoD has failed to attain its 40 percent goal in these DIGs.

EFFECTIVE DATE: June 2, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Renna, OUSD(AT&L), Assistant Director, DoD Office of Small Business Programs, 201-12th Street South, Suite 406, Arlington, VA 22202; telephone 703–604–0157.

SUPPLEMENTARY INFORMATION: The Office of Federal Procurement Policy and the Small Business Administration issued a final policy directive and an implementation plan on May 25, 1999, for the Small Business Competitiveness Demonstration Program. The Program is further implemented in the Federal Acquisition Regulation (FAR) Subpart 19.10 and the Defense FAR Supplement Subpart 219.10.

Under the Program, small business set-asides are suspended for certain DIGs. However, pursuant to sections III.D.2.a. and IV.A.3. of the final policy directive and implementation plan, participating agencies such as DoD are required to reinstitute the use of small business set-asides whenever the small business awards under any DIG fall below 40 percent. Reinstitution of small business set-asides is limited to the organizational units(s) within the participating agency that failed to meet the small business participation goal(s).

The Federal Procurement Data System—Next Generation indicates that for the 12-month period ending September 30, 2007, DoD's small business participation rate was less than 40 percent in the following DIGs:

1. Construction (Except Dredging), Subsector 236, Construction of Buildings.
2. Non-Nuclear Ship Repair, Product or Service Code J999 (West Coast only).
3. Architect and Engineering Services (including Surveying and Mapping).
4. Refuse Systems and Related Services.

In addition to the DIGs identified above, section IV.A.3. of the final policy directive and implementation plan requires that small business set-asides also be reinstituted when an individual organizational unit attained less than a 35 percent small business participation rate, even when DoD's overall achievement in the DIG was 40 percent or greater. The 35 percent rule applies only to Architect and Engineering services and the Construction Subsectors and only for the specific NAICS codes (formerly known as Standard Industrial Classification codes) that fell below 35 percent. Accordingly, the Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing has directed that subsequent contracting opportunities in excess of the amount reserved for emerging small

businesses be solicited through competition restricted to eligible small businesses, for individual organizational units as follows:

1. *Department of the Army.*

(a)(1) Construction, Subsector 236, Construction of Buildings.

(2) Construction, Subsector 237, Heavy and Civil Engineering Construction.

- NAICS 237120.

(3) Construction, Subsector 238, Specialty Trade Contractors.

- NAICS 238110.
- NAICS 238290.
- NAICS 238350.

(b) Architect and Engineering Services (including Surveying and Mapping).

(c) Refuse Systems and Related Services.

2. *Department of the Navy.*

(a)(1) Construction, Subsector 236, Construction of Buildings.

(2) Construction, Subsector 237, Heavy and Civil Engineering Construction.

- NAICS 237120.
- NAICS 237990.

(3) Construction, Subsector 238, Specialty Trade Contractors.

- NAICS 238120.
- NAICS 238190.
- NAICS 238390.

(b) Non-Nuclear Ship Repair, Product or Service Code J999 (West Coast only).

(c) Architect and Engineering Services (including Surveying and Mapping).

3. *Department of the Air Force.*

(a)(1) Construction, Subsector 236, Construction of Buildings.

(2) Construction, Subsector 237, Heavy and Civil Engineering Construction.

- NAICS 237120.

(b) Architect and Engineering Services (including Surveying and Mapping).

4. *Defense Contract Management Agency.*

Construction, Subsector 236, Construction of Buildings.

5. *Defense Logistics Agency.*

(a) Construction, Subsector 236, Construction of Buildings.

(b) Construction, Subsector 238, Specialty Trade Contractors.

- NAICS 238110.
- NAICS 238120.
- NAICS 238220.

6. *Defense Commissary Agency.*

Refuse Systems and Related Services.

7. *Washington Headquarters Services.*

(a) Construction, Subsector 236, Construction of Buildings.

(b) Architect and Engineering Services (including Surveying and Mapping).

8. *Defense Information Systems Agency.*

Construction, Subsector 238, Specialty Trade Contractors.

- NAICS 238990.

9. *Defense Threat Reduction Agency.*

Construction, Subsector 237, Heavy and Civil Engineering Construction.

- NAICS 237990.

10. *Defense Education Activity.*

Construction, Subsector 238, Specialty Trade Contractors.

- NAICS 238990.

11. *U.S. Special Operations Command.*

(a) Construction, Subsector 237, Heavy and Civil Engineering Construction.

- NAICS 237310.

(b) Construction, Subsector 238, Specialty Trade Contractors.

- NAICS 238170.

Consistent with the revised final policy directive and implementation plan, section III.D.3.b., competition in the four DIGs with an estimated award value that is equal to or less than the emerging small business reserve amount will be restricted to emerging small businesses, provided that the contracting officer determines there is a reasonable expectation of obtaining offers from two or more responsible emerging small businesses that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, requirements will be processed in accordance with FAR Subpart 19.5 or 19.8.

The use of unrestricted competition will be reinstated upon determining, after annual review, that contract awards to small business concerns again meet the required goals.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E8–13459 Filed 6–13–08; 8:45 am]

BILLING CODE 5001–08–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 July 16, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 10, 2008.

Angela C. Arrington,

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

Office of the Secretary

Type of Review: Extension.

Title: Generic Application Package for Discretionary Grant Programs.

Frequency: Other: New Awards.

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

Reporting and Recordkeeping Hour Burden:

Responses: 12,012.

Burden Hours: 290,287.

Abstract: The Department is requesting an extension of the approval for the Generic Application Package that numerous ED discretionary grant

programs use to provide to applicants the forms and information needed to apply for new grants under those grant program competitions. The Department will use this Generic Application Package for discretionary grant programs that: (1) Only use the standard ED or Federal-wide grant applications forms that have been cleared separately through OMB and (2) only use selection criteria chosen from the menu of criteria in 34 CFR 75.210 of the Education Department General Administrative Regulations (EDGAR); statutory selection criteria or a combination of EDGAR and statutory selection criteria. The use of the standard ED grant application forms and the use of EDGAR and/or statutory selection criteria promotes the standardization and streamlining of ED discretionary grant application packages.

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 3655. 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. E8–13411 Filed 6–13–08; 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 July 16, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g. , ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 10, 2008.

Angela C. Arrington,

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

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Upward Bound Annual Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,143.

Burden Hours: 10,287.

Abstract: Grantees in the Upward Bound Programs (Upward Bound, Upward Bound Math-Science, and Veterans Upward Bound) must submit this report annually. The Department uses the reports to evaluate the performance of grantees prior to awarding continuation funding and to assess grantees' prior experience at the end of the budget period. The Department will also aggregate the data across projects to provide descriptive information on the programs and to analyze their outcomes in response to the Government Performance and Results Act. A System of Records Notice (SORN) for the Privacy Act System of Records associated with this information collection is underway. Privacy Data will not be retrieved until an approved SORN has been published in the **Federal Register** for 30 days, or is approved by OMB.

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 3582. 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. E8–13412 Filed 6–13–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Charter Schools Program (CSP) Grants to Non-State Educational Agencies for Planning, Program Design, and Implementation and for Dissemination; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.282B and 84.282C.

Dates: Applications Available: June 16, 2008.

Deadline for Transmittal of Applications: July 31, 2008.

Deadline for Intergovernmental Review: September 29, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model and to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of charter schools, and to evaluate the effects of charter schools, including their effects on students, student academic achievement, staff, and parents. The non-State Educational Agency (non-SEA) grants for planning, program design, and implementation, and non-SEA grants for dissemination provide funds for these purposes to eligible applicants in States in which the SEA does not have an approved application under the CSP.

Non-SEA eligible applicants that propose to use grant funds for planning, program design, and implementation must apply under CFDA No. 84.282B. Non-SEA eligible applicants that request funds for dissemination activities must submit their applications under CFDA No. 84.282C.

Priority: This priority is from the notice of final priorities for discretionary grant programs, published in the **Federal Register** on October 11, 2006 (71 FR 60046).

Competitive Preference Priority: For FY 2008, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award an additional 10 points to an application that meets this priority.

This priority is:

Secondary Schools.

Projects that support activities and interventions aimed at improving the academic achievement of secondary school students who are at greatest risk of not meeting challenging State academic standards and not completing high school.

Program Authority: 20 U.S.C. 7221–7221j.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities for discretionary grant programs published in the **Federal Register** on October 11, 2006 (71 FR 60046).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply only to institutions of higher education.

Note: The regulations in 34 CFR part 99 apply only to educational agencies or institutions.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,000,000.

Estimated Range of Awards: $130,000–$175,000 per year.

Estimated Average Size of Awards: $150,000 per year.

Estimated Number of Awards: 17–23.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months under CFDA No. 84.282B. Up to 24 months under CFDA No. 84.282C.

Note: Planning and implementation grants awarded by the Secretary to non-SEA eligible applicants will be awarded for a period of up to 36 months, no more than 18 months of which may be used for planning and program design and no more than two years of which may be used for the initial implementation of a charter school. Dissemination grants are awarded for a period of up to two years.

III. Eligibility Information

1. Eligible Applicants

Planning and Initial Implementation (CFDA No. 84.282B): Non-SEA eligible applicants in States with a State statute specifically authorizing the establishment of charter schools and in which the SEA elects not to participate in the CSP or does not have an application approved under the CSP.

Dissemination (CFDA No. 84.282C): Charter schools, as defined in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001(ESEA).

Note: A charter school may apply for funds to carry out dissemination activities, whether or not the charter school previously applied for or received funds under the CSP for planning or implementation, if the charter school has been in operation for at least three consecutive years and has demonstrated overall success, including—

(1) Substantial progress in improving student academic achievement;

(2) High levels of parent satisfaction; and

(3) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

Note: *Eligible applicant* is defined in section 5210(3) of the ESEA. The following States currently have approved applications under the CSP: Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Wisconsin. In these States, non-SEA eligible applicants interested in participating in the CSP should contact the SEA for information related to the State's CSP subgrant competition.

2. *Cost Sharing or Matching:* These programs do not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Erin Pfeltz, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W255, Washington, DC 20202–5970. Telephone: (202) 205–3525 or by e-mail: *erin.pfeltz@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. The Secretary strongly encourages applicants to limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

3. *Submission Dates and Times:*

Applications Available: June 16, 2008.

Deadline for Transmittal of Applications: July 31, 2008.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 29, 2008.

4. *Intergovernmental Review:* These competitions are subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for these competitions.

5. *Funding Restrictions:*

Use of Funds for Post-Award Planning and Design of the Educational Program and Initial Implementation of the Charter School. A non-SEA eligible applicant receiving a grant under this program may use the grant funds only for—

(a) Post-award planning and design of the educational program, which may include (i) refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and (ii) professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include (i) informing the community about the school; (ii) acquiring necessary equipment and educational materials and supplies; (iii) acquiring or developing curriculum materials; and (iv) other initial operational costs that cannot be met from State or local sources.

Use of Funds for Dissemination Activities. A charter school may use these funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program), or to disseminate information about the charter school through such activities as—

(a) Assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers and that agree to be held to at least as high a level of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student performance in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student performance in other schools.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Charter Schools Program, CFDA Numbers 84.282B and 84.282C, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Charter Schools Program at: *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.282, not 84.282B or 84.282C).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include

(1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Erin Pfeltz, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W255, Washington, DC 20202–5970. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.282B or 84.282C), 400 Maryland Avenue, SW., Washington, DC 20202–4260. or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.282B or 84.282C), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.282B or 84.282C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: Non-SEA eligible applicants applying for CSP grant funds must address both the statutory application requirements and the selection criteria described in the following paragraphs. Each applicant applying for CSP grant funds may choose to respond to the application requirements in the context of its responses to the selection criteria.

The statutory application requirements for all applicants submitting under CFDA Nos. 84.282B and 84.282C are listed in paragraph (a) in this section.

The selection criteria for non-SEA applicants for *Planning, Program Design, and Implementation Grants (CFDA No. 84.282B)* are listed in paragraph (b) in this section.

The selection criteria for non-SEA applicants for *Dissemination Grants (CFDA No. 84.282C)* are listed in paragraph (c) in this section.

(a) *Application Requirements (CFDA Nos. 84.282B and 84.282C).* (i) Describe the educational program to be implemented by the proposed charter school, including how the program will enable all students to meet challenging State student academic achievement standards, the grade levels or ages of students to be served, and the curriculum and instructional practices to be used;

(ii) Describe how the charter school will be managed;

(iii) Describe the objectives of the charter school and the methods by which the charter school will determine its progress toward achieving those objectives;

(iv) Describe the administrative relationship between the charter school and the authorized public chartering agency;

(v) Describe how parents and other members of the community will be involved in the planning, program design, and implementation of the charter school;

(vi) Describe how the authorized public chartering agency will provide for continued operation of the charter school once the Federal grant has expired, if that agency determines that the charter school has met its objectives;

(vii) If the charter school desires the Secretary to consider waivers under the authority of the CSP, include a request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes are necessary for the successful operation of the charter school and a description of any State or local rules, generally applicable to public schools, that will be waived for, or otherwise not apply to, the school;

(viii) Describe how the grant funds will be used, including how these funds will be used in conjunction with other Federal programs administered by the Secretary;

(ix) Describe how students in the community will be informed about the charter school and be given an equal opportunity to attend the charter school;

(x) Describe how a charter school that is considered an LEA under State law, or an LEA in which a charter school is located, will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act; and

(xi) If the eligible applicant desires to use grant funds for dissemination activities under section 5202(c)(2)(C) of the ESEA, describe those activities and how those activities will involve charter schools and other public schools, LEAs, developers, and potential developers.

(b) *Selection Criteria (CFDA No. 84.282B).* The following selection criteria are from section 5204 of the ESEA and 34 CFR 75.210 of EDGAR.

The maximum possible score for all the criteria in this section is 130 points.

The maximum possible score for each criterion is indicated in parentheses following the criterion.

In evaluating an application from a non-SEA eligible applicant for Planning, Program Design, and Implementation, the Secretary considers the following criteria:

(i) The quality of the proposed curriculum and instructional practices (20 points).

Note: The Secretary encourages the applicant to describe the educational program to be implemented by the proposed charter school, including how the program will enable all students to meet challenging State student academic achievement standards, the grade levels or ages of students to be served, and the curriculum and instructional practices to be used.

(ii) The degree of flexibility afforded by the SEA and, if applicable, the LEA to the charter school (10 points).

Note: The Secretary encourages the applicant to include a description of how the State's law establishes an administrative relationship between the charter school and the authorized public chartering agency and exempts the charter school from significant State or local rules that inhibit the flexible operation and management of public schools.

The Secretary also encourages the applicant to include a description of the degree of autonomy the charter school will have over such matters as the charter school's budget, expenditures, daily operation, and personnel in accordance with its State's charter school law.

(iii) The extent of community support for the application (20 points).

Note: The Secretary encourages the applicant to describe how parents and other members of the community will be informed about the charter school, and how students will be given an equal opportunity to attend the charter school.

(iv) The ambitiousness of the objectives for the charter school (10 points).

Note: The Secretary encourages the applicant to describe the objectives for the charter school and how these grant funds

will be used, including how these funds will be used in conjunction with other Federal programs administered by the Secretary, in meeting these objectives.

(v) The quality of the strategy for assessing achievement of those objectives (20 points).

(vi) The likelihood that the charter school will meet those objectives and improve educational results for students during and after the period of Federal financial assistance (10 points).

(vii) The extent to which the proposed project encourages parental involvement (10 points).

Note: The Secretary encourages the applicant to describe how parents and other members of the community will be involved in the planning, program design, and implementation of the charter school.

(viii) The quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the qualifications, including relevant training and experience, of the project director; and the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (10 points).

(ix) The contribution the charter school will make in assisting educationally disadvantaged and other students to achieve State academic content standards and State student academic achievement standards (20 points).

(c) *Selection Criteria (CFDA No. 84.282C).* The following selection criteria are from section 5204 of the ESEA and 34 CFR 75.210 of EDGAR.

The maximum possible score for all the criteria in this section is 110 points.

The maximum possible score for each criterion is indicated in parentheses following the criterion.

In evaluating an application from a non-SEA eligible applicant for a dissemination grant, the Secretary considers the following criteria:

(i) The quality of the proposed dissemination activities and the likelihood that those activities will improve student achievement (30 points).

Note: The Secretary encourages the applicant to describe the objectives for the proposed dissemination activities and the methods by which the charter school will determine its progress toward achieving those objectives.

(ii) The extent to which the school has demonstrated overall success, including—

(1) Substantial progress in improving student achievement (10 points);

(2) High levels of parent satisfaction (10 points); and

(3) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school (10 points).

(iii) The extent to which the results of the proposed project will be disseminated in a manner that will enable others to use the information or strategies (20 points).

(iv) The quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the qualifications, including relevant training and experience, of the project director and the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (10 points).

(v) The quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (20 points).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The goal of the CSP is to support the creation and development of a large number of high-quality charter schools that are free from State or local rules that inhibit flexible operation, are held accountable for enabling students to reach challenging State performance standards, and are open to all students. The Secretary has set two performance indicators to measure this goal: (1) The number of charter schools in operation around the Nation, and (2) the percentage of charter school students who are achieving at or above the proficient level on State examinations in mathematics and reading. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

All grantees will be expected to submit an annual performance report documenting their contribution in assisting the Department in meeting these performance measures.

VII. Agency Contact

For Further Information Contact: Erin Pfeltz, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W255, Washington, DC 20202–5970. Telephone: (202) 205–3525 or by e-mail: *erin.pfeltz@ed.gov.*

If you use a TDD, call the FRS toll-free at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government

Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: June 11, 2008.

Douglas B. Mesecar,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E8–13470 Filed 6–13–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: A meeting involving members of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will take place on June 23–25, 2008, at the headquarters of the IEA in Paris, France, in connection with the IEA's Emergency Disruption Simulation Exercise (ERE4); and on June 25, 2008, a meeting of the IAB will be held in connection with a meeting of the IEA's Standing Group on Emergency Questions (SEQ).

DATES: June 23–25, 2008.

ADDRESSES: 9, rue de la Fédération, Paris, France.

FOR FURTHER INFORMATION CONTACT: Diana D. Clark, Assistant General for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–3417.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meetings is provided:

A meeting involving members of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) in connection with Emergency Response Exercise 4 (ERE4) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France on June 23–25, 2008. The ERE4 sessions will be held from 2 p.m.–5:30 p.m. on June 23, from 9 a.m.–6 p.m. on June 24, and from 9:30 a.m.–3 p.m. on June 25. In addition, after the session on June 23, the IEA intends to brief traders and media representatives on their anticipated roles in the ERE4 exercise, and an additional meeting of the IAB will be held from 8:30 a.m. to 9:15 a.m. on June 25. The purpose of ERE4 is to train IEA Government delegates in the use of IEA emergency response procedures by reacting to a hypothetical oil supply disruption scenario. The purpose of the IAB meeting is to collect participants' feedback on the progress of ERE4.

The agenda for the IAB meeting is to collect the reactions and assessments of IAB participants in ERE4 for communication to the IEA and to review the agenda of the June 25, 2008, meeting of the IEA's Standing Group on Emergency Questions (SEQ).

The agenda for ERE4 is under the control of the IEA. It is expected that the IEA will adopt the following agenda:

I. Training Session on IEA Emergency Response Measures for New SEQ Participants and Selected IEA Non-Member Countries (June 23, 2008, 2 p.m.–5:30 p.m.)

1. Welcome Address by the IEA Deputy Executive Director.
2. Introduction by the SEQ Chairman.
3. Introduction to IEA Emergency Response Policies and Objectives.
4. How the Global Oil Market Works.
5. Natural Gas Market.
6. IEA Energy Statistics and Oil Data Systems.
7. The Media's Perspective.
8. Introduction to the Oil Disruption Simulation Exercise.

II. Emergency Disruption Response Exercise 4 (ERE4) (June 24, 2008, 9 a.m.–6 p.m., and Continuing June 25, 9:30 a.m.–3 p.m.)

June 24, morning:

1. Welcome, Introductions, and Explanations of the Exercise.
2. Scenario 1: Explanation, Presentation, Break-Out Sessions.

June 24, afternoon:

3. Plenary Discussion of Scenario 1.
4. Scenario 2: Presentation and Break-Out Sessions.
5. Plenary Discussion of Scenario 2.

June 25, morning:

6. Scenario 3: Presentation and Break-Out Sessions.

June 25, afternoon:

7. Plenary Discussion of Scenario 3.
8. Wrap-up and Concluding Remarks.

A meeting of the IAB to the IEA will be held at the headquarters of the IEA commencing at 3:30 p.m. on June 25, 2008. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) on June 25 at the same location and time.

The agenda of the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda.
2. Approval of the Summary Record of the 122nd Meeting.
3. Status of Compliance with IEP Stockholding Commitments.
4. Committee Observers from IEA Non-Member Countries.
5. Emergency Response Exercise 4:

—Initial Response Plan and Proposed Country Shares.

—Participation of Non-Member Country Delegates in ERE4.

6. Emergency Response Review Program:

—Draft Questionnaire.

—ERR Schedule.

7. Policy and Other Developments in Member Countries:

—Accession of Poland to the IEA.

8. The SEQ Program of Work for 2009–2010.
9. Documents for Information:

—Monthly Oil Statistics: March 2008.

—Emergency Reserve Situation of IEA Member Countries on April 1, 2008.

—Emergency Reserve Situation of IEA Candidate Countries on April 1, 2008.

—Base Period Final Consumption: 2Q 2007–1Q 2008.

—Update of Emergency Contacts List.

10. Other Business:

—Tentative Schedule of Meetings:

—September 17–18, 2008.

—November 18–20, 2008.

—March 24–26, 2009.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, June 10, 2008.

Diana D. Clark,

Assistant General Counsel for International and National Security Programs.

[FR Doc. E8–13452 Filed 6–13–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: P–2146–111]

Alabama Power Company; Notice of Application and Applicant-Prepared EA Accepted for Filing, Soliciting Motions to Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

June 6, 2008.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2146–111.

c. *Date filed:* July 28, 2005.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Hydroelectric Project, which includes the Weiss, H. Neely Henry, Logan Martin, Lay and Bouldin developments, the Mitchell Hydroelectric Project (P–82), and the Jordan Hydroelectric Project (P–618). Alabama Power Company (Alabama Power) has requested that Project Nos. 2146, 82, and 618 be consolidated into one project. We are processing these three projects under Project No. 2146–111.

f. *Location:* On the Coosa River, in the states of Alabama and Georgia. The Logan Martin development affects less than an acre of federal lands, the Lay development affects 133.5 acres of federal lands, the Mitchell Project affects 127.3 acres of federal lands, and the Jordan Project affects 10.1 acres of federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. Jerry L. Stewart, Senior Vice President and Senior Production Officer, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291–8180.

i. *FERC Contact:* Janet Hutzel, Telephone (202) 502–8675, and e-mail *janet.hutzel@ferc.gov*

j. Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing.

l. The proposed Coosa River Project would consist of seven developments. The Weiss, H. Neely Henry, and Logan Martin developments would operate in peaking mode. The Lay, Mitchell, Jordan, and Bouldin developments would operate in run-of-river mode. The total capacity for all developments is 960.9 megawatts (MW). The project works would include the following:

Weiss Development

The Weiss development consists of: (1) A total of 30,798 feet of water retaining structures which includes a diversion dam and gated spillway, powerhouse about 3.5 miles from the spillway, and earth embankments consisting of: (a) A 7,000-foot-long power canal which carries water from the main reservoir to the powerhouse forebay, (b) a 1,300 foot-long tailrace canal which carries water from the tailrace to the Coosa River, (c) 1.7-mile-long east and 1.8-mile-long west earthfill embankments, extending from the powerhouse, (d) 1.35-mile-long east and 1.0-mile-long west earth embankments extending from the spillway, (e) three freeboard dikes, (f) 120-foot-long and 140-foot-long concrete gravity non-overflow structures to the left and right of the powerhouse, (g) a retaining wall to the left of the spillway and a non-overflow structure to the right of the spillway, (h) a concrete gated spillway equipped with five 40-foot-wide by 38-foot-high Tainter gates and one 16-foot-wide by 22-foot-high Tainter gate which serves as a trash gate, (i) a second trash gate of same dimension located to the right of the powerhouse, and (j) a 20-mile-long bypassed reach of the Coosa River; (2) a 52-mile-long, 30,200-acre reservoir at normal pool elevation 564 feet mean sea level (msl), and total storage capacity of 704,404 acre-feet at maximum elevation 574 feet msl; (3) a 256-foot-long concrete power house with a total rated capacity of 87.75 MW; (4) trashracks located at the turbine intakes with 6-inch bar spacing; (5) a substation; and (6) other appurtenances. The project annually generates an estimated 215,500 megawatt-hours (MWh) of energy.

H. Neely Henry Development

The H. Neely Henry development consists of: (1) A total of 4,705 feet of water retaining structures, which includes a concrete dam and two earthen embankment sections consisting of: (a) A 305-foot-long spillway equipped with six 40-foot-wide by 29-foot-high Tainter gates, (b) a 300-foot-long intake section, (c) a 120-foot-long non-overflow bulk head section at the east end of the spillway, and (d) a 133-foot-long non-overflow section at the west end of the spillway; (2) a 78-mile-long, 11,235-acre reservoir at normal pool elevation 508 feet msl, with a total storage capacity of 30,640 acre-feet at normal elevation 508 feet msl; (3) a 300-foot-long concrete power house with a total rated capacity of 72.9 MW; (4) trashracks located at the turbine intakes with 6-inch bar spacing; (5) a substation; and (6) other appurtenances. The project annually generates an estimated 210,700 MWh of energy.

Logan Martin Development

The Logan Martin development consists of: (1) A total of 6,192 feet of water retaining structures, which includes a 100-foot-high concrete dam and gated spillway, a powerhouse and earthen embankment section consisting of: (a) A 327-foot-long concrete spillway equipped with six 40-foot-wide by 38-foot-high Tainter gates, and one 17.5-foot-wide by 21-foot-high vertical trash gate, (b) a 4,650-foot-long east earth embankment, (c) 850-foot-long west earth embankment, (d) a 120-foot-long concrete powerhouse intake; (2) a 48.5-mile-long, 15,263-acre reservoir at normal pool elevation 465 feet msl, with a total storage capacity of 273,500 acre-feet at normal elevation 465 feet msl; (3) a 295-foot-long concrete power house with a total rated capacity of 128.25 MW; (4) trashracks located at the turbine intakes with 6-inch bar spacing; (5) a substation; and (6) other appurtenances. The project annually generates an estimated 400,200 MWh of energy.

Lay Development

The Lay development consists of: (1) A total of 2,120 feet of water retaining structures, which includes a concrete dam and gated spillway, integrated powerhouse, and an earthen embankment section consisting of: (a) A 194-foot-long concrete bulkhead, (b) a 304-foot-long concrete intake section, (c) a 930-foot-long gated concrete spillway section equipped with twenty-six 30-foot-wide by 17-foot-high radial lift gates, (d) a 180-foot-long concrete bulkhead, and (e) a 512-foot-long earth embankment; (2) a 48.2-mile-long, 12,000-acre reservoir at normal pool elevation 465 feet msl; (3) a 376-foot-long concrete powerhouse with a total rated capacity of 177 MW; (4) a total of 144 trashracks located at the turbine intakes with 6-inch bar spacing; (5) a substation and (6) other appurtenances. The project annually generates an estimated 639,445 MWh of energy.

Mitchell Development

The Mitchell development consists of: (1) A total of 1,264 feet of water retaining structures, which includes a concrete dam and gated spillway, and two powerhouses consisting of: (a) A 964-foot-long gated concrete spillway section equipped with twenty-three 30-foot-wide by 15-foot-high timber faced radial lift gates, and three 30-foot-wide by 25-foot-high steel faced radial gates; (2) a 14-mile-long 5,850-acre reservoir at normal pool elevation 312 feet msl; (3) two powerhouses, which include: (a) The original 449-foot-long concrete powerhouse with a total rated capacity of 20 MW and b) a new 300-foot-long concrete powerhouse with a total rated capacity of 150 MW; (4) a total of 124 trashracks located at the turbine intakes with 6-inch bar spacing; (5) a substation; and (6) other appurtenances. The project annually generates an estimated 527,666 MWh of energy.

Jordan Development

The Jordan development consists of: (1) A total of 2,066 feet of water retaining structures, which includes a 125-foot-high concrete dam and gated spillway, and integrated powerhouse consisting of: (a) A 75-foot-long non-overflow concrete bulkhead, (b) a 246-foot-long concrete intake section, (c) a 1330-foot-long gated concrete spillway equipped with eighteen 34-foot-wide by 8-foot-high radial lift gates, and seventeen 30-foot-wide by 18-foot-high vertical lift gates, and (d) a 177-foot-long non-overflow concrete bulkhead; (2) an 18-mile-long, 5,880-acre reservoir at normal pool elevation 252 feet msl; (3) a 300-foot-long concrete power house with a total rated capacity of 100 MW; (4) four trashracks located at the turbine intakes with 4-inch bar spacing; (5) a substation; and (6) other appurtenances. The project annually generates an estimated 148,543 MWh of energy.

Bouldin Development

The Bouldin development consists of: (1) A total of 9,428 feet of water retaining structures, which includes a 210-foot-high concrete dam, a powerhouse integrated with the project intake, and two earthen embankments consisting of: (a) A 2,200-foot-long earth embankment to the left of the intake, (b) a 228-foot-long concrete intake section equipped with three 40-foot-wide by 35.5-foot-high Tainter gates, and (c) a 7,000-foot-long earth embankment to the right of the intake; (2) a 3-mile-long, 920-acre intake canal at normal pool elevation 252 feet msl; (3) a 228-foot-long concrete powerhouse with a total rated capacity of 225 MW; (4) sixty-three trashracks located at the turbine intakes with 6-inch bar spacing; (5) a substation; and (6) other appurtenances. The project annually generates an estimated 822,000 MWh of energy.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:*

At this time we do not anticipate the need for preparing a draft environmental assessment. Recipients will have 30 days to provide the Commission with any written comments on the environmental assessment (EA). All comments filed with the Commission will be considered in the Order taking final action on the license applications. However, should substantive comments requiring re-analysis be received on the EA, we will consider preparing a subsequent EA. The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, terms and conditions, and prescriptions	(August 2008).
Notice of Availability of the EA (single EA)	(February 2009).

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–13424 Filed 6–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–220]

Ameren/UE; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 9, 2008.

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* P–459–220.

c. *Date Filed:* May 23, 2008.

d. *Applicant:* Ameren/UE.

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* The project is located at Topsider Bar near mile marker 18.8+0.5 of the Glaize Arm of the Lake of the Ozarks, in Camden County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Jeff Green, Shoreline Supervisor, Ameren/UE, P.O. Box 993, Lake Ozark, MO 65049, (573) 365–9214.

i. *FERC Contact:* Any questions on this notice should be addressed to Christopher Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov*.

j. *Deadline for filing comments and or motions:* July 11, 2008.

k. *Description of Request:* The application filed on May 23, 2008, requests approval to permit the construction of a new boat dock and after-the-fact approval to replace the floatation on an existing dock with a capacity of 9 watercraft by Ebling Enterprises at Topsider Bar near mile marker 18.8+0.5 of the Glaize Arm of the Lake of the Ozarks. The new 20-slip dock would be a total of 260 feet long and would have one central walkway. The existing dock with a capacity of 9 watercraft is 80 feet long and 32 feet wide and contains a fuel pumping station. No dredging, fuel dispensing, or sewage pumping facilities are proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (p–459) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–459–220). All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–13415 Filed 6–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–173]

Appalachian Power Company; Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions to Intervene, and Protests

June 9, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2210–173.

c. *Date Filed:* May 20, 2008.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Smith Mountain Pumped Storage Project.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Elizabeth B. Parcell, Environmental Coordinator I, Appalachian Power Company, P.O. Box 2021, Roanoke, Virginia 24022–2121 (703) 985–2348.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High, Telephone (202) 502–8674, and e-mail: *Shana.High@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* July 11, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2210–173) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Appalachian Power Company (APC) is seeking Commission approval to grant permission to construct a single dock with 2 boat slips adjacent to shoreline identified as an Impact Mitigation Zone (IMZ), as defined in the project's shoreline management plan (SMP). The proposed dock would serve two adjacent single-family homes at 111 and 113 Saunders Point Road in Huddleston, Virginia. The licensee is requesting a variance as required by the SMP for development within the IMZ.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–13414 Filed 6–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–415–000]

International Paper Company and RSFC Land Management, LLC; Notice of Application

June 9, 2008.

Take notice that on June 2, 2008, International Paper Company (IP), 6400 Poplar Avenue, Memphis, TN 38197 and RSFC Land Management, LLC RSFC, 10877 Wilshire Boulevard, Suite 710, Los Angeles, CA 90024, filed with the Federal Energy Regulatory Commission an abbreviated joint application, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), as amended, and Part 157 of the Commission's regulations. In this joint application, IP requests Commission authorization to abandon by sale to RSFC approximately 17.83 miles of 6 ⅝-inch-diameter pipeline running from Tensas parish, Louisiana to Natchez, Mississippi, 1,000 feet of 6-inch-diameter pipeline, a 200 horsepower compressor station and appurtenant facilities. Accordingly, RSFC requests Commission authorization to acquire these facilities from IP. RSFC also requests a blanket certificate under Part 157 of the Commission's regulations as well as various waivers under Parts 154, 201, 260, and 284 all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Carolyn F. Corwin, Covington & Burling LLP, 1201 Pennsylvania Avenue, NW., Washington, DC 20004, phone (202) 662–5338, *ccorwin@cov.com,* or Barbara S. Jost, Davis Wright Tremaine LLP, 1919 Pennsylvania Avenue, NW., Washington, DC 20006, phone (202) 973–4207, fax (202) 973–4499, *barbarajost@dwt.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: June 30, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–13416 Filed 6–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–229–004]

SG Resources Mississippi, L.L.C.; Notice of Application for Amendment

June 6, 2008.

Take notice that on May 29, 2008, SG Resources Mississippi, L.L.C. (SGRM), 28420 Hardy Toll Road North, Suite 125, Spring, Texas 77373, filed an application in Docket No. CP02–229–004, pursuant to section 7 of the Natural Gas Act for an order authorizing its Supplemental Expansion Project, an amendment to its certificate issued in Docket No. CP02–229–000 on October 10, 2002 and amended in Docket No. CP02–229–002 on January 24, 2007.

SGRM seeks authorization to (i) increase the working gas capacity of each of the three previously authorized Southern Pines Energy Center storage caverns from 8 Bcf to 10 Bcf; (ii) develop a fourth 12.8 Bcf cavern; (iii) construct, own and operate two additional brine disposal wells; (iv) construct, own, operate, and maintain a 24-inch pipeline loop of the existing Destin Lateral; (V) install an interconnect pipeline that will connect the Destin Lateral Loop to the Destin Pipeline Company, LLP and Southeast Supply Header, LLC meter stations; (vi) install two additional 8,000 horsepower compressors; and (vii) substitute for the required sonar surveys on each cavern every five years a requirement to implement and maintain an enhanced cavern integrity monitoring program. SGRM also seeks reaffirmation of its previously authorized market based rates for its storage and hub services.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to James F. Bowe, Jr., Dewey & LeBoeuf, LLP, 1101 New York Avenue, NW., Washington, DC 20005, (202) 346–8000, Fax (202) 346–8102, e-mail *jbowe@dl.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: June 27, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–13425 Filed 6–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP08–403–000]

Atmos Energy Marketing, LLC, BP Energy Company, Delta Energy, LLC, Direct Energy, Hess Corporation, Honda of America Mfg., Inc., Integrys Energy Services, Inc., Interstate Gas Supply, Inc., National Energy Marketers Association, Ohio Farm Bureau Federation, Sequent Energy Management, L.P., Complainants, v. Columbia Gas Transmission Corporation, Respondent; Notice of Complaint

June 9, 2008.

Take notice that on June 6, 2008, pursuant to sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c, Part 154 of the Commission's Regulations, Subpart G of Part 284 of the Commission Regulations, specifically sections 284.222(g) and 284.222(h), and Rule 206 of the Rules and Practice and Procedure, 18 CFR 385.206, Atmos Energy Marketing, LLC, BP Energy Company, Delta Energy, LLC, Direct Energy, Hess Corporation, Honda of America Mfg., Inc., Interstate Gas Supply, Inc., National Energy Marketers Association, Ohio Farm Bureau Federation, and Sequent Energy Management, L.P. (Complainants) filed a formal complaint against Columbia Gas Transmission Corporation (Respondent), requesting the Commission to direct the Respondent to cease and desist from implementing unilaterally substantial changes to its current primary delivery points under currently effective contracts and new services, though actions that are not authorized under its tariff and are contrary to law.

The Complainants further request emergency relief to require the Respondent to cease and desist from unilaterally compelling its firm shippers to amend the primary delivery points under their contracts by establishing an arbitrary deadline of July 31, 2008, for making elections for service at the new primary delivery points, or otherwise face the potential inability to continue to receive firm services in accordance with their currently effective contracts.

The Complainants have requested fast track processing of the complaint.

The Complainants state that a copy of the complaint has been served on the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests, must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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

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

Comment Date: 5 p.m. Eastern Time on June 20, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–13413 Filed 6–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–365–000; Docket No. CP06–366–000]

Bradwood Landing, LLC; NorthernStar Energy, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Bradwood Landing LNG Project

June 6, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this final Environmental Impact Statement (EIS) for the construction and operation of the liquefied natural gas (LNG) import terminal proposed by Bradwood Landing, LLC, and the associated natural gas sendout pipeline proposed by NorthernStar Energy, LLC (collectively referred to hereafter as NorthernStar) in the above-referenced dockets. The Bradwood Landing LNG Project facilities would be located in Clatsop and Columbia Counties, Oregon, and Cowlitz County, Washington.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The U.S. Department of Homeland Security Coast Guard, U.S. Army Corps of Engineers (COE), and the U.S. Department of Transportation are cooperating agencies for the development of the EIS. A cooperating agency has jurisdiction by law or special expertise with respect to potential environmental impacts associated with the proposal and is involved in the NEPA analysis.

Based on the analysis included in the EIS, the FERC staff concludes that if the Project is constructed and operated in accordance with applicable laws and regulations, and the project sponsor's proposed mitigation, and the staff's additional mitigation recommendations, it would have mostly limited adverse environmental impacts and would be an environmentally acceptable action.

The Bradwood Landing LNG Project would include the construction and operation of an LNG import terminal about 38 miles up the Columbia River from its mouth, at the location of the former lumber mill and town of Bradwood, in Clatsop County, Oregon. Elements of the LNG terminal include:

- A dredged maneuvering area in the Columbia River adjacent to the existing navigation channel maintained by the COE;
- A single berth capable of handling LNG carriers ranging in capacity from 100,000 to 200,000 cubic meters (m^3);
- A set of four 16-inch-diameter unloading arms on the wharf, and a 1,240-foot-long cryogenic transfer pipeline from the wharf to the LNG storage tanks;
- Two full-containment LNG storage tanks, each with a capacity of 160,000 m^3; and
- A set of seven submerged combustion vaporizers to re-gasify LNG to natural gas, with a capacity to send out 1.3 billion cubic feet of natural gas per day.

The EIS also addresses the potential environmental effects of the construction and operation of the associated natural gas sendout pipeline between the Bradwood Landing LNG terminal and an interconnection with the existing Williams Northwest Pipeline Corporation (Williams Northwest) interstate system near Kelso,

Washington. The pipeline facilities would include:

- A 36.3-mile-long, underground, high-pressure welded steel pipeline, consisting of 18.9 miles of 36-inch-diameter pipeline in Clatsop and Columbia Counties, Oregon, and 17.4 miles of 30-inch-diameter pipeline in Cowlitz County, Washington;
- Five meter stations, including one at the LNG terminal, at the Georgia-Pacific Wauna paper mill delivery point, the interconnection with the existing Northwest Natural Gas Company intrastate system, the Portland General Electric Company Beaver power plant delivery point, and the Williams Northwest interconnection; and
- At least five mainline block valves, two pig [1] launchers, and two pig receivers.

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the final EIS have been mailed to federal, state, and local agencies, public interest groups, individuals who have requested the final EIS, or provided comments; libraries and newspapers in the Project area; and parties to this proceeding. Hard copies of volume 1 (narrative text) of this EIS were mailed to those specifically requesting them, and all others received a compact disk (CD) that can be read from a personal computer with a CD–ROM drive. Volume 2, consisting of appendices, was only produced on CD. A limited number of hard copies and CDs are available from the Public Reference Room identified above.

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372). The administrative public record for this proceeding is available through the FERC's Internet Web site (*http://www.ferc.gov*). Using the ''Documents and Filings'' tab, click on the ''eLibrary link,'' and select ''General Search.'' Enter the project docket number excluding the last three digits (i.e., CP06–365) in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC's Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Web site (*http://www.ferc.gov/docs-filing/esubscription.asp*).

Kimberly D. Bose,

Secretary.

[FR Doc. E8–13419 Filed 6–13–08; 8:45 am]

BILLING CODE 6717–01–P

[1] A ''pig'' is a tool used inside of a pipeline to clean or inspect it.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–45–002 and CP06–401–002]

TransColorado Gas Transmission Company; Amended Notice of Intent To Prepare an Environmental Assessment for the Proposed Transcolorado-Meeker Compressor Station Project and Request for Comments on Environmental Issues

June 6, 2008.

As previously noticed on March 18, 2008, and amended herein, the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of TransColorado Gas Transmission Company's (TransColorado) relocation of previously authorized, but uninstalled, natural gas transmission system facilities in Rio Blanco County, Colorado. The proposed TransColorado-Meeker Compressor Station site replaces TransColorado's previously-filed site referred to as the Love Ranch Compressor Station. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the amended project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on July 7, 2008. Details on how to submit comments are provided in the ''Public Participation'' section of this notice.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and to encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

TransColorado proposes to relocate two compressor units previously authorized for installation at the existing Greasewood Compressor Station to an alternative site about 6 miles west (referred to as the TransColorado-Meeker Compressor Station site). Both the Greasewood Compressor Station and the proposed TransColorado-Meeker Compressor Station are in Rio Blanco County, Colorado. Specifically, TransColorado proposes to amend its authorizations for both the North Expansion Project in Docket No. CP05–45–000 and the Blanco-Meeker Expansion Project in Docket No. CP06–401–000 to relocate a 2,370-horsepower unit and a 3,550-horsepower unit, respectively, to the TransColorado-Meeker Compressor Station site. TransColorado further seeks authority to construct and operate a new interconnection with Rockies Express Pipeline, LLC (Rockies Express) at the existing Meeker Compressor Station.

Both compressor units were originally authorized to allow TransColorado to deliver up to 300,000 dekatherms per day (Dth/d) to Williams Energy Marketing and Trading Company (Williams) through Wyoming Interstate Company's (WIC) pipeline system. Installation of the units was deferred to coincide with an increase in Williams' contract quantities beginning January 1, 2008. TransColorado states that relocating the compressor units and the new interconnect would accommodate the changing market needs of Williams on the TransColorado pipeline system and increases the overall delivery flexibility of the pipeline. Upon installation of the two compressors at the TransColorado-Meeker Compressor

Station site, TransColorado would be capable of delivering 130,000 Dth/d to WIC at the Greasewood Compressor Station and 210,000 Dth/d to Rockies Express via the proposed interconnection at the Meeker Compressor Station.

The TransColorado-Meeker Compressor Station site is located about 1,760 feet north of TransColorado's originally proposed Love Ranch site, and would now be installed entirely within Rockies Express's existing Meeker Compressor Station. Construction and operation of the proposed facilities would occur within the existing Meeker Compressor Station and affect 3.3 acres of previously disturbed land.

The general location of the proposed facilities is shown in appendix.[1]

The EA Process

We[2] are preparing this EA to comply with the National Environmental Policy Act of 1969 (NEPA) which requires the Commission to take into account the environmental impact that could result if it authorizes TransColorado's proposal. By this notice, we are also asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, we are requesting public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use and visual quality
- Cultural resources
- Vegetation and wildlife (including threatened and endangered species)
- Air quality and noise
- Reliability and safety

We will also evaluate possible alternatives to the proposed project or portions of the project, where necessary, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, local libraries and newspapers, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are received and considered, please carefully follow the instructions in the ''Public Participation'' section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal and alternatives to the proposal, including alternative compressor station sites and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1;
- Reference Docket Nos. CP05–45–002 and CP06–401–002; and
- Mail your comments so that they will be received in Washington, DC on or before July 7, 2008.

Please note that the Commission strongly encourages electronic filing of any comments, interventions, or protests to this proceeding. See Title 18 of the Code of Federal Regulations (CFR), Part 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your computer's hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.'' In addition, there is a ''*Quick Comment*'' option available, which is an easy method for interested persons to submit text-only comments on a project. The *Quick-Comment User Guide* can be viewed at *http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf.* Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid e-mail address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding.

If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

As described above, we may publish and distribute the EA for comment. If

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the ''Additional Information'' section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

you are interested in receiving an EA for review and/or comment, please return the Environmental Mailing List Form (appendix 3). If you do not return the Environmental Mailing List Form, you will be taken off the mailing list. All individuals who provide written comments will remain on our environmental mailing list for this project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, then on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, any public meetings or site visits scheduled for this proposed project will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–13418 Filed 6–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3151–008, etc.]

PJM RTO Filers et al; Notice of Filing and Setting Forth Timeline

June 6, 2008.

PSEG Energy Resources & Trade LLC	Docket No. ER99–3151–008.
Public Service Electric and Gas Company	Docket No. ER97–837–007.
PSEG Power Connecticut LLC	Docket No. ER03–327–002.
PSEG Fossil LLC	Docket No. ER08–447–000.
PSEG Nuclear LLC	Docket No. ER08–448–000.
Allegheny Power	Docket No. ER98–1466–005.
Allegheny Energy Supply Company, LLC	Docket No. ER00–814–006.
Green Valley Hydro, LLC	Docket No. ER00–2924–006.
Buchanan Generation, LLC	Docket No. ER02–1638–005.
PPL Electric Utilities Corporation,	Docket No. ER00–1712–008.
Lower Mount Bethel Energy, LLC	Docket No. ER02–2408–003.
PPL Brunner Island, LLC	Docket No. ER00–744–006.
PPL Holtwood, LLC	Docket No. ER00–744–006.
PPL Marlins Creek, LLC	Docket No. ER00–744–006.
PPL Montour, LLC	Docket No. ER00–744–006.
PPL Susquehanna, LLC	Docket No. ER00–744–006.
PPL University Park, LLC	Docket No. ER02–1327–005.
PPL EnergyPlus, LLC	Docket No. ER00–1703–003.
PPL Edgewood Energy, LLC	Docket No. ER02–1749–003.
PPL Shoreham Energy, LLC	Docket No. ER02–1747–003.
PPL Great Works, LLC	Docket No. ER99–4503–005.
PPL Maine, LLC	Docket No. ER00–2186–003.
PPL Wallingford Energy LLC	Docket No. ER01–1559–004.
Atlantic City Electric Company	Docket No. ER96–1361–013.
Delmarva Power & Light Company	Docket No. ER99–2781–011.
Potomac Electric Power Company	Docket No. ER98–4138–009.
Conectiv Energy Supply, Inc.	Docket No. ER00–1770–019.
Conectiv Bethlehem, LLC	Docket No. ER02–453–010.
Pepco Energy Services, Inc.	Docket No. ER98–3096–015.
Bethlehem Renewable Energy, LLC	Docket No. ER07–903–002.
Eastern Landfill Gas, LLC	Docket No. ER05–1054–003.
Potomac Power Resources, LLC	Docket No. ER01–202–008.
Fauquier Landfill Gas, LLC	Docket No. ER04–472–007.
Dominion Energy Marketing, Inc.	Docket No. ER01–468–008.
Dominion Nuclear Connecticut, Inc.	Docket No. ER00–3621–009.
Dominion Nuclear Marketing III, LLC	Docket No. ER00–3746–009.
Dominion Energy Kewaunee, Inc.	Docket No. ER04–318–004.
Dominion Energy Brayton Point, LLC	Docket No. ER05–36–005.
Dominion Energy Manchester Street, Inc.	Docket No. ER05–37–005.
Dominion Energy New England, Inc.	Docket No. ER05–34–005.
Dominion Energy Salem	Docket No. ER05–35–005.
Dominion Retail, Inc.	Docket No. ER04–249–005.
Elwood Energy, LLC	Docket No. ER99–1695–010.
Fairless Energy, LLC	Docket No. ER02–23–011.
Kincaid Generation, LLC	Docket No. ER97–30–006.
State Line Energy, LLC	Docket No. ER96–2869–013.
Virginia Electric and Power Company	Docket No. ER97–3561–005.
	Docket No. ER00–1737–011.
Baltimore Gas and Electric Company	Docket No. ER99–2948–012.
Constellation Power Source Generation, Inc.	Docket No. ER00–2918–011.
Calvert Cliffs Nuclear Power Plant, Inc.	Docket No. ER00–2917–011.

Constellation Energy Commodities Group, Inc.	Docket No. ER97–2261–022.
Handsome Lake Energy, LLC	Docket No. ER01–556–010.
Nine Mile Point Nuclear Station, LLC	Docket No. ER01–1654–013.
Constellation NewEnergy, Inc.	Docket No. ER02–2567–011.
Constellation Energy Commodities Group Maine, LLC	Docket No. ER02–699–005.
R.E. Ginna Nuclear Power Plant, LLC	Docket No. ER04–485–008.
Raven One, LLC	Docket No. ER07–247–003.
Raven Two, LLC	Docket No. ER07–245–003.
Raven Three, LLC	Docket No. ER07–244–003.
Exelon Generation Company, LLC	Docket No. ER00–3251–015.
AmerGen Energy Company, LLC	Docket No. ER99–754–016.
Commonwealth Edison Company	Docket No. ER98–1734–014.
Exelon Energy Company	Docket No. ER01–1919–011.
PECO Energy Company	Docket No. ER01–1147–006.
Exelon West Medway, LLC	Docket No. ER01–513–021.
Exelon Wyman, LLC	Docket No. ER01–513–021.
Exelon New Boston, LLC	Docket No. ER01–513–021.
Exelon Framingham, LLC	Docket No. ER01–513–021.
Exelon New England Power Marketing, L.P.	Docket No. ER99–2404–011.
FirstEnergy Operating Companies	Docket No. ER01–1403–006.
Pennsylvania Power Company, et al.	Docket No. ER06–1443–002.
Jersey Central Power & Light Company	Docket No. ER04–366–005.
FirstEnergy Solutions Corp.	Docket No. ER01–2968–007.
FirstEnergy Generation Corporation	Docket No. ER01–845–006.
FirstEnergy Nuclear Generating Corporation	Docket No. ER05–1122–004.
FirstEnergy Generating Mansfield Unit 1 Corp.	Docket No. ER08–107–001.

Take notice that, as provided in the Notice Setting Forth Timeline issued May 22, 2008 in the above-referenced dockets, the comment period for the filings described below that were submitted on April 30, 2008, May 15, 2008, May 27, 2008, and June 2, 2008 in these dockets is established as set forth below.

On April 30, 2008, PJM Interconnection, L.L.C. (PJM) filed a Motion To Intervene Out-Of-Time and Submission of The PJM Simultaneous Import Limitation Study, pursuant to the above captioned dockets for the PJM RTO Filers. PJM requested CEII treatment for the power flow cases for the Simultaneous Import Limitation Study.

On May 15, 2008, in conjunction with a conference call held on May 15, 2008 in the above-captioned dockets, PJM filed documents that it discussed on the conference call. On May 27, 2008, PJM filed additional power flow cases to supplement the Simultaneous Import Limitation Study and requested CEII treatment for these power flow cases.

On June 2, 2008, pursuant to the May 22, 2008 Notice Setting Forth Timeline, PJM filed a supplement to the PJM Simultaneous Import Limitation Study (i.e. , the PJM East Study) in the above captioned dockets. PJM requested CEII treatment for the supplemental power flow cases filed on June 2, 2008.

The May 22, 2008 notice also stated that a subsequent notice will instruct the PJM RTO Filers on when they must comply with the remaining requirements of a staff data request sent to the PJM RTO Filers on April 4, 2008. A number of entities have filed requests for clarification or rehearing of Order No. 697–A concerning the issue of how simultaneous transmission import capability is to be allocated among competing suppliers for purposes of performing the indicative screens.[1] Notice is hereby given that the PJM RTO Filers must file their revised updated market power analyses 45 days after the date of issuance of a Commission order addressing the issue of how simultaneous transmission import capability is to be allocated among competing suppliers for purposes of performing the indicative screens.

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

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

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

Comment Date: 5 p.m. Eastern Time 21 days after issuance of this notice.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–13423 Filed 6–13–08; 8:45 am]

BILLING CODE 6717–01–P

[1] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, n. 208 FERC Stats. & Regs ¶ 31,268 (2008).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–747–000; ER08–747–001]

Beaver Ridge Wind, LLC; Notice of Issuance of Order

June 6, 2008.

Beaver Ridge Wind, LLC (Beaver Ridge) filed an application for market-based rate authority, with an

accompanying tariff. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Beaver Ridge also requested waivers of various Commission regulations. In particular, Beaver Ridge requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Beaver Ridge.

On June 6, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Beaver Ridge should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov.*

Notice is hereby given that the deadline for filing protests is July 7, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Beaver Ridge is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person, provided that such issuance or assumption is for some lawful object within the corporate purposes of Beaver Ridge, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Beaver Ridge's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–13420 Filed 6–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–859–000]

Luna Energy Investments LLC; Notice of Issuance of Order

June 6, 2008.

Luna Energy Investments LLC (Luna Energy) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Luna Energy also requested waivers of various Commission regulations. In particular, Luna Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Luna Energy.

On June 6, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Luna Energy, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov.*

Notice is hereby given that the deadline for filing protests is July 7, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Luna Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Luna Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Luna Energy's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–13422 Filed 6–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–851–000; ER08–851–001]

Valencia Power, LLC; Notice of Issuance of Order

June 6, 2008.

Valencia Power, LLC (Valencia Power) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Valencia Power also requested waivers of various Commission regulations. In particular, Valencia Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Valencia Power.

On June 6, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission

would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Valencia Power, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov.*

Notice is hereby given that the deadline for filing protests is July 7, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Valencia Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Valencia Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Valencia Power's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–13421 Filed 6–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2242–078]

Eugene Water and Electric Board; Notice of Meeting To Discuss Additional Information Responses

June 6, 2008.

a. *Type of Application:* New Major License.

b. *Project No.:* 2242–078.

c. *Date Filed:* November 24, 2006.

d. *Applicant:* Eugene Water and Electric Board.

e. *Name of Project:* Carmen-Smith Hydroelectric Project.

f. *Location:* On the McKenzie River in Lane and Linn Counties, near McKenzie Bridge, Oregon. The project occupies approximately 560 acres of the Willamette National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Randy L. Berggren, General Manager, Eugene Water and Electric Board, 500 East 4th Avenue, P.O. Box 10148, Eugene, OR 97440, (541) 484–2411.

i. *Date and Time of Meeting:* June 26, 2008, at 1 p.m. EST.

j. *Place:* This meeting will primarily occur via conference call; however, it is possible to participate in person at the Federal Energy Regulatory Commission (FERC) located in Washington, D.C. See item n. below for obtaining instructions on how to participate in the meeting.

k. *FERC Contact:* Bob Easton, (202) 502–6045 or *robert.easton@ferc.gov.*

l. *Background and Purpose of Meeting:* On November 24, 2006, Eugene Water and Electric Board filed a license application for the Carmen-Smith Project (FERC No. 2242). On October 30, 2007, FERC staff issued a request for additional information. Eugene Water and Electric Board filed its response to the additional information request on April 29, 2008. The purpose of this meeting is to clarify several issues associated with the filing of this information.

m. *Proposed Agenda:*

1. Introduction of Participants;
2. Response to AIR 1—sources of the fishway operational costs;
3. Response to AIR 15 and 24—the location of roads relative to project boundary and their nexus to the project;
4. Response to AIR 16—effects of the proposed new road on spotted owl habitat;
5. Response to AIR 19—the location of Ice Creek, Trail Bridge, and Lakes End campgrounds and their nexus to the project;
6. Response to AIR 24—acreage of federal lands within the project boundary
7. Other items;
8. Follow-up Actions.

n. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone (or in person). Please contact Bob Easton (see item k. for contact information) or Patti Leppert ((202) 502–6034; *patricia.leppert@ferc.gov*) by June 24, 2008, to RSVP and to receive specific instructions on how to participate in the meeting.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–13417 Filed 6–13–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2008–0443; FRL–8580–1]

Adequacy Status of Motor Vehicle Budget in Submitted Five Percent Plan for PM–10 for the Phoenix Metropolitan Nonattainment Area for Transportation Conformity Purposes; Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Adequacy.

SUMMARY: In this notice, EPA is notifying the public that the Agency has found that the motor vehicle emissions budget in the submitted *MAG 2007 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area (December 2007)* (''2007 MAG 5% Plan'') is adequate for transportation conformity purposes. The 2007 MAG 5% Plan was submitted to EPA on December 21, 2007 by the Arizona Department of Environmental Quality as a revision to the Arizona state implementation plan. The 2007 MAG 5% Plan includes a demonstration of no less than five percent annual emissions reductions in particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10) and a demonstration of PM–10 attainment in the Phoenix metropolitan area by 2010. As a result of our finding, the Maricopa Association of Governments and the U.S. Department of Transportation must use the motor vehicle emissions budget from the submitted five percent plan for PM–10 for future conformity determinations.

DATES: This finding is effective July 1, 2008.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, U.S. EPA, Region IX, Air

Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105–3901; (520) 622–1622 or *tax.wienke@epa.gov.*

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

Today's notice is simply an announcement of a finding that we have already made. EPA Region IX sent a letter to the Arizona Department of Environmental Quality and the Maricopa Association of Governments on May 30, 2008 stating that the 2010 motor vehicle emissions budget for PM–10 in the submitted 2007 MAG 5% Plan is adequate. The budget corresponds to the Phoenix metropolitan PM–10 nonattainment area, which encompasses roughly half of Maricopa County, including the cities of Phoenix and Mesa, and also the Apache Junction area of Pinal County, in central Arizona. Receipt of this motor vehicle emissions budget was announced on EPA's transportation conformity Web site, and no comments were submitted. The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

The adequate 2010 motor vehicle emissions budget (calculated for an annual average day) are provided in the following table:

ADEQUATE MOTOR VEHICLE EMISSIONS BUDGET

[In metric tons per day]

Budget year	PM–10 motor vehicle emissions budget
2010	103.3

Transportation conformity is required by Clean Air Act section 176(c). EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emissions budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). We have described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004, preamble starting at 69 FR 40038, and we used the information in these resources while making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

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

Dated: June 5, 2008.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E8–13519 Filed 6–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2008–0054; FRL–8579–9]

Board of Scientific Counselors, Homeland Security Subcommittee Meeting—July 2008

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) Homeland Security Subcommittee.

DATES: The meeting (teleconference call) will be held on Friday, July 11, 2008, from 1 p.m. to 3 p.m. eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meetings will be accepted up to 1 business day before the meeting.

ADDRESSES: Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Greg Susanke, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2008–0054, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2008–0054.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2008–0054.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Homeland Security Subcommittee Meeting—Spring 2008 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2008–0054.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2008–0054. Note: this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2008–0054. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Homeland Security Subcommittee Meeting—Spring 2008 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Greg Susanke, Mail Drop 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1300 Pennsylvania Ave. NW., Washington, DC 20460; via phone/voice mail at: (202) 564–9945; via fax at: (202) 565–2911; or via e-mail at: *susanke.greg@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

The meeting is open to the public. Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Greg Susanke, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

EPA ORD is conducting a prospective and retrospective independent expert review through the BOSC, of its Homeland Security Research Program, to evaluate the program's relevance, quality, performance, and scientific leadership. The BOSC's evaluation and recommendations will provide guidance to ORD's National Homeland Security Research Center. Proposed agenda items for the meeting include, but are not limited to: review and discussion of the draft subcommittee report which includes overall comments and recommendations to ORD's National Homeland Security Research Program, and responses to subcommittee charge questions.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Greg Susanke at (202) 564–9945 or *susanke.greg@epa.gov*. To request accommodation of a disability, please contact Greg Susanke, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: June 9, 2008.

Mary Ellen Radzikowski,

Acting Office Director, Office of Science Policy.

[FR Doc. E8–13483 Filed 6–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2003–0002; FRL–8579–7]

Notice of Availability for the Framework for Application of the Toxicity Equivalence Methodology for Polychlorinated Dioxins, Furans, and Biphenyls in Ecological Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of the final ''Framework for Application of the Toxicity Equivalence Methodology for Polychlorinated Dioxins, Furans, and Biphenyls in Ecological Risk Assessment'' (EPA/100/R–08/004). The purpose of the Framework is to assist EPA scientists in using the toxicity equivalence methodology to assess ecological risks from mixtures of dioxin-like chemicals, i.e., polychlorinated dibenzo-p-dioxins (PCDDs), dibenzofurans (PCDFs), and biphenyls (PCBs), as well as to inform EPA decision makers, other agencies, and the public about this methodology. This framework provides an introduction to the toxicity equivalence methodology, offers considerations for how and when to apply the methodology, and presents practical examples of its use. The Framework thus serves to enhance the application of the best available science. This document is not intended to serve as guidance on how to conduct a comprehensive risk assessment for dioxin-like chemicals or to act as a regulation or binding policy. EPA's Risk Assessment Forum oversaw the development of this document, incorporating input obtained from an expert workshop, scientists throughout the Agency, stakeholders, and a peer review by twelve experts from a range of scientific disciplines.

ADDRESSES: The final document is available electronically through the EPA Office of the Science Advisor's Web site at: *http://www.epa.gov/osa/raf/teframework/*. A limited number of paper copies will be available from EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone 1–800–490–9198 or 513–489–8190; facsimile 301–604–3408; e-mail *NSCEP@bps-lmit.com*. Please provide your name and mailing addresses and the title and EPA number (as given above) of the requested publication.

FOR FURTHER INFORMATION CONTACT: Seema Schappelle, Risk Assessment Forum, Mail Code 8105R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW.,Washington, DC 20460; telephone number: (202) 564–3372; fax number: (202) 564–2070, E-mail: *schappelle.seema@epa.gov*.

SUPPLEMENTARY INFORMATION: For more than a decade, EPA and other organizations have estimated the combined risks that mixtures of PCDDs, PCDFs, and PCBs pose to human health using the toxicity equivalence methodology. As both data and experience with the methodology have accumulated, experts have come to the consensus that the toxicity equivalence methodology can strengthen assessments of ecological risks as well. In 1998, EPA and DOI sponsored a workshop that recommended the development of further guidance on application of the toxicity equivalence methodology in ecological risk assessment. This framework has been developed in direct response to that workshop recommendation. EPA consulted with other federal agencies at key points during the document's development. In July 2003, EPA released a draft Framework for a 60-day public comment period. An external peer review was conducted in 2004 by twelve experts from a range of scientific disciplines.

Dated: May 15, 2008.

George M. Gray,

EPA Science Advisor.

[FR Doc. E8–13484 Filed 6–13–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

June 5, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this

opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Pursuant to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before July 16, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167; and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554, or via Internet at *Cathy.Williams@fcc.gov* and/or *PRA@fcc.gov.* Include in the comments the OMB control number of the collection as shown in the ''Supplementary Information'' section below or, if there is no OMB control number, the Title as shown in the ''Supplementary Information'' section.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at 202–418–2918, or via Internet at *Cathy.Williams@fcc.gov,* and/or *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR you want to review (or its Title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0463.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Declaratory Ruling, CG Docket No. 03–123, FCC 07–186.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents and Responses: 5,045 respondents; 5,211 responses.

Estimated Time per Response: 10–15 hours.

Frequency of Response: Annual reporting requirement; Recordkeeping requirement; Third Party Disclosure.

Total Annual Burden: 27,412 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority can be found at section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the Americans with Disabilities Act of 1990, Public Law 101–336, 104 Stat. 327.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On November 19, 2007, the Commission released the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order and Declaratory Ruling (*2007 TRS Cost Recovery Order*), CG Docket No. 03–123, FCC 07–186, adopting (1) A new cost recovery methodology for interstate traditional Telecommunications Relay Services (TRS) and interstate Speech-to-Speech (STS) based on the Muliti-state Average Rate Structure (MARS) plan proposed by Hamilton Relay, Inc., (2) a new cost recovery methodology for interstate captioned telephone service (CTS) and interstate and intrastate Internet-Protocol (IP) Captioned Telephone Service (IP CTS) based on the MARS plan, (3) a cost recovery methodology for IP Relay based on price caps, and (4) a cost recovery methodology for Video Relay Services (VRS) that adopts tiered rates based on call volume. The *2007 TRS Cost Recovery Order* also clarifies the nature and extent that certain categories of costs are compensable from the Interstate TRS Fund (Fund), and addresses certain issues concerning the management and oversight of the Fund, including financial incentives offered to consumers to make relay calls and the role of the Interstate TRS Fund Advisory Council.

The *2007 TRS Cost Recovery Order* establishes reporting requirements associated with the MARS plan cost recovery methodology for compensation from the Fund. Specifically, TRS providers must submit to the Fund administrator the following information annually, on a per-state basis, regarding the previous calendar year: (1) The per-minute compensation rate(s) for intrastate traditional TRS, STS and CTS, (2) whether the rate applies to session minutes or conversation minutes, (3) the number of intrastate session minutes for traditional TRS, STS and CTS, and (4) the number of intrastate conversation minutes for traditional TRS, STS, and CTS. Also, STS providers must file a report annually with the Fund administrator and the Commission on their specific outreach efforts directly attributable to the additional compensation approved by the Commission for STS outreach.

In the *2007 TRS Cost Recovery Order,* the Commission has assessed the effects of imposing the submission of rate data, and has found that there is no increased administrative burden on businesses with fewer than 25 employees. The Commission recognizes that the required rate data is presently available with the states and the providers of interstate traditional TRS, interstate STS, and interstate CTS, thereby no additional step is required to produce such data. The Commission therefore believes that the submission of the rate data does not increase an administrative burden on businesses.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–13526 Filed 6–13–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, June 17, 2008, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings;

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors;

Memorandum and resolution re: Interim Final Rule; Request for Comment: Financial Education Programs that Include the Provision of Bank Products and Services.

Discussion Agenda:

Memorandum and resolutions re: Interim Rule on Processing Deposit Accounts in the Event of an Insured Depository Institution Failure and Final Rule on Large-Bank Insurance Determination Modernization.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board 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 Board meetings videos are made available on-demand approximately one week after the event.

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), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: June 10, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–13379 Filed 6–13–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, June 17, 2008, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (c)(4), (c)(6), (c)(8), (9)(A)(ii), and (9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's supervisory and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: June 10, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–13380 Filed 6–13–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 06–03]

Premier Automotive Services, Inc. v. Robert L. Flanagan and F. Brooks Royster, III

Served: June 11, 2008.

By the Commission: Commissioners Joseph E. Brennan and Harold J. Creel, Jr.; with Commissioner Rebecca F. Dye, dissenting.

Order

On January 27, 2006, Premier Automotive Services, Inc. (''Premier'' or ''Complainant'') filed a complaint against Robert L. Flanagan and F. Brooks Royster, III (collectively ''Respondents'' or the ''Maryland State Officials'') alleging that Respondents' marine terminal leasing practices violate sections 10(b)(10), 10(d)(1) and 10(d)(4) of the Shipping Act of 1984 (''Shipping Act''), 46 U.S.C. 41102, 41104 and 41106. This proceeding is before the Commission on exceptions from an order of the Administrative Law Judge granting the Respondents' motion to dismiss.

The issue before the Commission is whether the complaint against certain named officials of the State of Maryland is within the bounds of *Ex parte Young,* 209 U.S. 123 (1908), a judicially-created exception to state sovereign immunity from suit by private parties. For the reasons set forth below, the Commission holds that this proceeding is barred by the sovereign immunity interests of the State of Maryland. Accordingly, Complainant's exceptions are denied.

I. Background

A. Parties

1. Complainant

Premier is a marine terminal operator involved in the business of providing marine terminal services to common carriers engaged in U.S. foreign commerce. Premier is an import/export vehicle processor and is a tenant at the Dundalk Marine Terminal (''Dundalk Terminal'') in Baltimore, MD. Premier's facilities are owned and operated by the Maryland Port Authority (''MPA''), an arm of the State of Maryland.

2. Respondents

At the time the complaint was filed, Respondent Robert L. Flanagan was the Secretary of the Maryland Department of Transportation (''MDOT'') and the Chairman of the Maryland Port Commission (''MPC''). The complaint was brought against Flanagan in his official capacity.

Respondent F. Brooks Royster, III was the Executive Director of the Maryland Port Authority (''MPA'') at the time of the complaint. The complaint names Royster in his official capacity.[1] MDOT, MPC and MPA are not named as parties.

B. Summary of Proceedings

This proceeding was initiated by the Complainant on January 27, 2006. On February 21, 2006, Respondents filed a Motion to Dismiss and Response to Request for Commission Investigation arguing that (1) The case is barred by Constitutional principles of state sovereign immunity; (2) the Shipping Act does not authorize private complaints for injunctive relief, and (3) that the Respondents should not be held

[1] Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, whenever a respondent named in an official capacity no longer holds the position for which he was named in the action, the official's successor is automatically substituted as a party.

liable as individuals under provisions of the Shipping Act which are specifically applicable to common carriers, ocean transportation intermediaries and marine terminal operators.

Complainant responded, in part, that the action is allowable under *Ex parte Young,* which provides an exception to state sovereign immunity, and that the Shipping Act provides generally for prospective injunctive relief, an essential component of the relief sought under *Ex parte Young.*

The Administrative Law Judge (''ALJ'') granted the motion to dismiss on March 31, 2006, finding that the complaint was barred by sovereign immunity since *Ex parte Young* did not apply. Premier filed exceptions to the ALJ's decision and Respondents filed a reply brief. The Commission heard oral argument on June 13, 2007.

Pursuant to section 11(h) of the Shipping Act, Premier filed a concurrent action in the United States District Court for the District of Maryland seeking injunctive relief pursuant to its Shipping Act claims at the Commission. The District Court ruled that the complaint was not barred by sovereign immunity under the *Young* doctrine; however, the Court denied injunctive relief finding that relief on the merits of the Shipping Act claim was not likely. *See Premier Automotive Services, Inc.* v. *Robert L. Flanagan, et al.*, No. 06–1761, slip op. at 33 (D. Md. Oct. 31, 2006). Premier then appealed the District Court's decision to the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit affirmed the lower court's decision. *Premier Automotive Services, Inc.* v. *Flanagan,* 492 F.3d 274 (4th Cir. 2007).

II. Positions of the Parties

A. Premier

Premier is an import/export vehicle processor which occupies facilities at the Dundalk Terminal in Baltimore, MD. Premier's facilities are owned and operated by the MPA, an arm of the State of Maryland. *Ceres Marine Terminals, Inc.* v. *Maryland Port Admin.,* 30 S.R.R. 358, 366 (2004).

Premier's long-term lease of Lot 90 at the Dundalk Terminal ended in 2002. Since that time, Premier has been operating as a month-to-month tenant of MPA. Premier's processing facilities on Lot 90 provide a range of services to vehicle and heavy equipment manufacturers, importers and exporters, including vehicle and equipment receipt, release and assembly, accessory installation, body, paint and warranty work, and storage and other pier-side services. According to Premier, it has invested heavily in Lot 90, including the construction of a 27,500 square foot specialty building containing a body shop, paint shop, offices and wash line (the ''Building''), which it owns and on which it pays real estate taxes. This Building is alleged to be an important component of Premier's ability to service its customers. However, under the terms of Premier's long-term lease, improvements to the leasehold revert to the Port upon termination of the lease.

Premier alleges that the Respondent's marine terminal leasing practices violate sections 10(b)(10), 10(d)(1), and 10(d)(4) of the Shipping Act. Premier claims that MPA has no regulations governing the conduct or course of lease negotiations or the terms of MPA leases. According to Premier, upon expiration of its long-term lease with Premier, MPA repeatedly offered new leases that were commercially irrational and confiscatory in three related material respects. First, the proffered lease holds Premier to an unreasonable quota for processing vehicles through the leased premises; second, the lease proposals allow MPA to relocate Premier to facilities not comparable to Lot 90; and, third, in the event of such forced relocation, Premier would not have the right to terminate the lease while remaining subject to the same objectionable minimum volume processing quota. In combination, Premier alleges that these three provisions rendered MPA's lease offers commercially meaningless, if not confiscatory.

Premier filed exceptions to the ALJ's finding that the action was barred by state sovereign immunity on the grounds that the ALJ misapplied the *Ex parte Young* doctrine. Premier argues that the distinctions drawn by the ALJ between ''ministerial'' and ''discretionary'' administrative decisions are misapplied, and that the analysis is therefore in error. Appeal of Premier from Order Dismissing Complaint at 2. Premier argues that while the initial administrative decision whether to lease property may be discretionary, once a state port authority determines to lease property, it is bound by the strictures of federal law, including the Shipping Act. *Id.* at 2–3. Accordingly, Premier argues that if the facts demonstrate a violation of the Shipping Act, then the actions of the Maryland State Officials in seeking to lease property in violation of federal law would not be shielded by state sovereign immunity under the Court's holding in *Ex parte Young.*

B. Respondents

Respondents filed a motion to dismiss asserting that state sovereign immunity bars the complaint, and arguing that *Ex parte Young* does not apply since the Complainant seeks injunctive relief related to a specific piece of real property in which the state claims an interest. Respondents cite *Idaho* v. *Coeur d' Alene Tribe,* 521 U.S. 261 (1997), for the proposition that state interests in land to which Maryland claims title are ''special sovereignty interests'' upon which a state remains entitled to sovereign immunity from claims in a federal forum. Respondents argue that the rationale of *Couer d'Alene* should be extended to include not only actions involving title and regulatory control over state lands, but also to actions related to leasing of state lands.

The ALJ granted the Maryland State Officials' motion to dismiss based upon: (1) The discretionary nature of MPA's leasing decisions; (2) the complexity of discretionary state government processes involved, including the leasing process the Commission is asked to supervise; and (3) the degree of intervention required by the Commission to police any subsequent negotiation process.

On appeal, Respondents argue that the ALJ properly held that *Ex parte Young* does not authorize Premier's private complaint. Respondents reiterate the argument that the potential relief can overcome an otherwise legitimate *Ex parte Young* claim where the relief sought implicates special sovereignty interests, *i.e.*, the infringement upon property interests of a state.

III. Discussion

As explained by the Supreme Court in *Federal Maritime Comm'n* v. *South Carolina State Ports Authority,* 535 U.S. 743 (2002):

> The preeminent purpose of state sovereign immunity is to accord States the dignity that is consistent with their status as sovereign entities. See *In re Ayers,* 123 U.S. 443, 505 (1887). ''The founding generation thought it 'neither becoming nor convenient that the several States of the Union, invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer the complaints of private citizens.' '' *Alden* [v. *Maine*], 527 U.S. at 748 (quoting *In re Ayers, supra,* at 505).

535 U.S. at 760. The Commission is now called to determine whether, through the legal fiction of allowing suit against state officials under the Court's doctrine announced in *Ex parte Young,* 209 U.S. 123 (1908), the Commission may summon officials of the State of Maryland to answer the complaint of a

private company, Premier. In resolving questions of the proper scope and application of *Ex parte Young,* we are instructed of the need ''to ensure that the doctrine of sovereign immunity remains meaningful, while also giving recognition to the need to prevent violations of federal law,'' *Idaho* v. *Coeur d'Alene Tribe,* 521 U.S. at 269.

The Ex Parte Young Exception To Sovereign Immunity

The Court's decisions firmly establish that ''an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another state.'' *Employees* v. *Missouri Dept. of Public Health and Welfare,* 411 U.S. 279, 280 (1973). Through its holding in *Federal Maritime Comm'n* v. *South Carolina State Ports Authority, supra,* the Court concluded that the Constitutional reach of state sovereign immunity similarly bars administrative tribunals from adjudicating complaints filed by a private party against a nonconsenting State. Premier's suit accordingly is barred by the State of Maryland's Eleventh Amendment immunity unless it falls within the exception recognized by the courts for certain suits seeking declaratory or injunctive relief against state officers in their official capacity. *See Ex parte Young,* 209 U.S. 123 (1908).

The *Ex parte Young* exception has application in circumstances where an action, otherwise barred in federal court, is brought against a state official seeking prospective equitable relief for a violation of the Constitution or federal law. *Marie O.* v. *Edgar,* 131 F.3d 610, 615 (7th Cir. 1997) (''[S]uits against state officials seeking prospective equitable relief for ongoing violations of federal law are not barred by the Eleventh Amendment under the *Ex parte Young* doctrine.''); *Antrican* v. *Odom,* 290 F.3d 178, 184 (4th Cir. 2002) (*Ex parte Young* exception allows private citizens ''to enjoin state officials in their official capacities from engaging in future conduct that would violate the Constitution or a federal statute.'')

Actions under *Ex parte Young* have long been constrained by the courts. Such restraints include judicial review of the nature of the activities undertaken, *i.e.*, whether involving discretionary or ministerial actions of the state official, *Ponca Tribe of Oklahoma* v. *State of Oklahoma,* 37 F.3d 1422 (10th Cir. 1994); whether the complaint addresses ''special sovereignty interests'' of the state, *Idaho* v. *Coeur d'Alene Tribe, supra*; whether the suit is in actuality an action against the state, *Pennhurst State School & Hosp.* v. *Halderman,* 465 U.S. 89, 101 (1984);[2] and the nature of the statutory scheme under which relief is sought, *Seminole Tribe of Fla.* v. *Florida,* 517 U.S. 44, 72 (1996). In *Idaho* v. *Coeur d'Alene Tribe, supra,* the Court voiced concern lest the *Ex parte Young* exception swallow the Eleventh Amendment rule of law:

> To interpret *Young* to permit a federal-court action to proceed in every case where prospective declaratory and injunctive relief is sought against an officer, named in his individual capacity, would be to adhere to an empty formalism and to undermine the principle, reaffirmed just last Term in *Seminole Tribe,* that Eleventh Amendment immunity represents a real limitation on a federal court's federal-question jurisdiction. The real interests served by the Eleventh Amendment are not to be sacrificed to elementary mechanics of captions and pleading. Application of the *Young* exception must reflect a proper understanding of its role in our federal system and respect for state courts instead of a reflexive reliance on an obvious fiction.

521 U.S. at 270. For purposes of the instant exceptions, we address only two of those factors limiting application of the *Ex parte Young* doctrine.

Discretionary versus Ministerial Activities

Premier's appeal of the ALJ's decision is based in part upon the ALJ's analysis of the discretionary versus ministerial acts of the Respondents. The ALJ observes *Young's* distinction between ''ministerial'' actions, which are amenable to affirmative injunctive relief, and ''discretionary'' actions which are not.

Premier argues that the ALJ misapplied *Young* by finding the actions under review were discretionary. Premier reasons that since state officials have no administrative discretion to violate the federal rights at issue, the actions of the state officials must, of necessity, be ministerial. In support of this argument, Premier notes that although the state's decision to lease lands may be discretionary, the state has no discretion regarding whether to comply with federal law, *i.e.*, the Shipping Act, and thus the actions of the state officials are ministerial in nature. We disagree.

In establishing the doctrine, *Ex parte Young* reviewed the nature of the state official's actions, and whether such actions are discretionary or ministerial in nature. The *Young* court stated:

> There is no doubt that the court cannot control the exercise of the discretion of an officer [of the state]. It can only direct affirmative action where the officer having some duty to perform not involving discretion, but merely ministerial in its nature, refuses or neglects to take such an action.

209 U.S. at 158–59. *Ex parte Young*'s explicit distinction between discretionary and ministerial conduct of state officials is a critical limitation on the parameters of the doctrine. *Ponca Tribe of Oklahoma* v. *State of Oklahoma,* 37 F.3d 1422, 1436 (10th Cir, 1994) *aff'd on other grounds, State of Oklahoma* v. *Ponca Tribe of Oklahoma,* 116 S.Ct. 1410 (1996).

Premier's action challenges whether the leasing practices of the Maryland Port Authority were reasonable under section 10(d) of the Shipping Act of 1984. Such claim merely begs the question whether negotiations of lease terms are a discretionary or ministerial act.[3] Leaving aside the nature of the negotiation process under review for the moment, it is self-evident, that what may be ''reasonable'' to MPA is not necessarily ''reasonable'' to Premier. Thus, without casting doubt upon the intent or motivations of either party, the Commission can easily envision a scenario where, after offering what seems like an eminently reasonable lease, MPA's offer is rejected by Premier nonetheless.

It was this dichotomy that appears to have most impressed both the ALJ and the District Court. As noted by Administrative Law Judge Krantz:

> In this case we have only the almost infinitely elastic term ''commercially reasonable'' to define what state officials are required to do. In seeking to require MPA to proffer a ''commercially reasonable'' lease, Premier has cited provisions it finds undesirable in the three rejected lease offers, and others that it finds desirable in the leases of six other tenants of the MPA.
>
> A decision for Premier would require the MPA to offer a new lease. If that proposal were unacceptable to Premier the Commission (or the Administrative Law Judge) would presumably need to determine whether that offer was commercially

[2] In *Pennhurst,* the Court explained that a suit is against the sovereign if ''the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration,'' or if the effect of the judgment would be ''to restrain the Government from acting, or to compel it to act.'', citing *Dugan* v. *Rank,* 372 U.S. 609, 620 (1963).

[3] In the Seventh Circuit, a ministerial act has been defined as an act ''in which a person performs in a given statement of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to, or the exercise of his own judgment upon the propriety of acts being done.'' *Adden* v. *Middlebrooks,* 688 F.2d 1147, (7th Cir 1982). Further, courts in the Ninth Circuit have defined a discretionary act as that ''which requires the exercise of personal deliberation, decision and judgment.'' *White* v. *Conlon,* 2006 WL 1663574 (D.Nev. 2006). A ministerial act is ''an act performed by an individual in a prescribed legal manner in accordance with the law, without regard to, or the exercise of, the judgment of the individual.'' *Id.*

reasonable and, if it were not, to require MPA to make a new, more favorable lease offer.

Ruling on Motion to Dismiss, at 5. Rather more tersely, the District Court concluded:

> In fact, the Court finds no evidence to undermine the conclusion that, in negotiating with Premier, MPA was acting in a reasonable manner to advance legitimate goals, consistent with its legislated purpose.

Memorandum in Civil Action WMN–06–1733 (October 31, 2006), at 24, 25–26.

In the instant case, the Commission concludes that negotiation of a leasehold interest is inherently a discretionary process. *See, Ponca Tribe of Oklahoma* v. *State of Oklahoma,* 37 F.3d at 1436 ''[t]he act of negotiating * * * is the epitome of a discretionary act. How the state negotiates; what it perceives to be its interests that must be preserved; where, if anywhere, that it can compromise its interests—these all involve acts of discretion.''; *Seminole Tribe of Fla.* v. *State of Florida,* 11 F.3d 1016 (11th Cir. 1994) (rejecting application of *Ex parte Young*); *Poarch Band of Creek Indians* v. *State of Alabama,* 784 F.Supp. 1549 (S.D. Ala. 1992) (rejecting *Ex parte Young* claim where relief would require ordering the governor to exercise his discretion in negotiating with the Plaintiff). *But see, Spokane Tribe of Indians* v. *State of Washington,* 790 F.Supp 1057 (E.D. Wash. 1991); *Elephant Butte Irrigation Dist.* v. *Dept of Interior,* 160 F.3d 602 (10th Cir. 1998). Accordingly, the Commission finds that Premier's action falls outside the scope of *Ex parte Young.*

Adequacy of Relief under the Shipping Act

In any event, we believe that in enacting the Shipping Act of 1984, the Congress created a remedial scheme which provides adequately for relief to be extended to complainants, such as Premier, without resort to extraordinary procedures made available under *Ex parte Young. See Schweiker* v. *Chilicky,* 487 U.S. 412, 423 (1988) (''When the design of a Government program suggests that Congress has provided what it considers adequate remedial mechanisms for constitutional violations that may occur in the course of its administration, we have not created additional * * * remedies.'') Under authority conferred through the Shipping Act, as amended, the Commission has long administered programs which directly regulate government-owned and operated ports as well as the practices and operations of government-controlled carriers.

In *Federal Maritime Comm'n* v. *South Carolina State Ports Authority, supra,* the Court was called upon to determine whether state sovereign immunity would preclude the Federal Maritime Commission from adjudicating a private party's complaint that a state-run port violated the Shipping Act of 1984. Although commenting favorably that the ''FMC administrative proceedings bear a remarkably strong resemblance to civil litigation in federal courts,'' 535 U.S. at 757, the Court stated:

> * * * we hold that state sovereign immunity bars the FMC from adjudicating complaints filed by a private party against a nonconsenting State. Simply put, if the Framers thought it an impermissible affront to a State's dignity to be required to answer the complaints of private parties in federal courts, we cannot imagine that they would have found it acceptable to compel a State to do exactly the same thing before the administrative tribunal of an agency, such as the FMC.

535 U.S. at 760. Responding to the argument that federal regulation of maritime commerce limits sovereign immunity, the Court replied:

> ''[e]ven when the Constitution vests in the Congress complete lawmaking authority over a particular area, the Eleventh Amendment prevents congressional authorization of suits by private parties against nonconsenting States.'' *Ibid.* Of course, the Federal Government retains ample means of ensuring that state-run ports comply with the Shipping Act and other valid federal rules governing ocean-borne commerce. The FMC, for example, remains free to investigate alleged violations of the Shipping Act, either upon its own initiative or upon information supplied by a private party, see, e.g. 46 CFR 502.282 (2001). Additionally, the Commission ''may bring suit in a district court of the United States to enjoin conduct in violation of [the Act].'' 46 U.S.C. App § 1710(h)(1). Indeed, the United States has advised us that the Court of Appeals' ruling below ''should have little practical effect on the FMC's enforcement of the Shipping Act,'' Brief for United States * * *

535 U.S. at 767–68, citing *Seminole Tribe of Fla. v. Florida, supra* (footnote omitted).

Inasmuch as Congress has prescribed remedial measures to address violations of statutorily created rights, the courts should hesitate before casting aside such measures in favor of the judicially-prescribed protections of *Ex parte Young. Id.* at 74, citing *Schweiker* v. *Chilicky,* 487 U.S. 412, 423 (''where Congress had created a remedial scheme for the enforcement of a particular federal right, we have, in suits against federal officers, refused to supplement that scheme with one created by the judiciary.''). Accordingly, as the private parties herein remain free to complain to the Commission about unlawful state activity and the agency has authority adequate to the cause of investigating and taking action thereon, the fundamental justifications for the creation of *Ex parte Young* are not implicated. We see no sound reason to supplement the existing statutory remedies (Commission enforcement of the Shipping Act directly against state related entities) by extending *Ex parte Young* to privately-filed Shipping Act complaints. *Schweiker* v. *Chilicky, supra*; *Seminole Tribe of Fla.* v. *Florida, supra,* 517 U.S. at 74. Interpreting *Ex parte Young* as applying in every case where injunctive relief is sought constitutes the sort of ''empty formalism'' that undermines sovereign immunity. *Coeur d'Alene, supra,* 521 U.S. at 270.

IV. Conclusion

For the foregoing reasons, the Commission *denies* the exceptions of Premier Automotive Services, Inc. from the Order dismissing the verified complaint; and *affirms* the Administrative Law Judge's initial decision to the extent consistent with this order.

Wherefore, it is ordered, that the above captioned proceeding is dismissed.

By the Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–13489 Filed 6–13–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 2008.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Lewis County Capital Corporation, Ladera Ranch, California; to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank, Lewis County, Vanceburg, Kentucky.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Charter Bancshares, Inc., Corpus Christi, Texas, and Charter IBHC, Inc., Wilmington, Delaware; to acquire 51 percent of the voting shares of Charter Alliance Bank, Corpus Christi, Texas, a de novo bank.

Board of Governors of the Federal Reserve System, June 11, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–13455 Filed 6–13–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-08–0572]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Health Message Testing System—Revision—National Center for Health Marketing (NCHM), Coordinating Center for Health Information and Service (CCHIS), Centers for Disease Control and Prevention, (CDC).

Background and Brief Description

The National Center for Health Marketing (NCHM) was established as part of the Centers for Disease Control and Prevention's Futures Initiative to help ensure that health information, interventions, and programs at CDC are based on sound science, objectivity, and continuous customer input.

Before CDC disseminates a health message to the public, the message always undergoes scientific review. However, reflecting the current state of scientific knowledge accurately provides no guarantee that the public will understand a health message or that the message will move people to take recommended action. Communication theorists and researchers agree that for health messages to be as clear and influential as possible, target audience members or representatives must be involved in developing the messages and provisional versions of the messages must be tested with members of the target audience.

However, increasingly there are circumstances when CDC must move swiftly to protect life, prevent disease, or calm public anxiety. Health message testing is even more important in these instances, because of the critical nature of the information need. Consider the following situations:

CDC must communicate about a hazard, outbreak, or other emergency that presents an urgent threat to one or more segments of the public. The national crisis in which anthrax spores contaminated mail, postal facilities, and congressional buildings is a striking example.

CDC receives a mandate from Congress with a tight deadline for communicating with the public about a specific topic. For example, in 1998 Congress gave CDC 120 days to develop and test messages for a public information campaign about *Helicobacter pylori,* a bacterium that can cause stomach ulcers and increase cancer risk if an infected individual is not treated with antibiotics.

Emerging lifestyle or technological trends create an ephemeral opportunity to leverage the attention or behavior of the public to increase the reach and/or salience of prevention messages. For example, media monitoring reveals a partnership between Napster, a music-based Web site, and the Pennsylvania State University. This partnership creates an ample opportunity for CDC to join in the collaboration to reach students with a salient health promotion message. For instance, a ticker found on the top of the Napster homepage screen might contain an informational URL followed by a message encouraging students, especially those residing in dormitories, to receive the meningitis inoculation series at their campus health center. This message would be tailored prior to the beginning of each academic year and would need to be posted in a timely manner before the arrival of the incoming freshman class.

Of equal importance, this communication mechanism can be effectively used in emergency ''rapid response'' situations such as the campus shooting incidents at Virginia Tech and North Illinois University.

In the interest of timely health message dissemination, many programs forgo the important step of testing messages on dimensions such as clarity, salience, appeal, and persuasiveness (i.e., the ability to influence behavioral intention). Skipping this step avoids the delay involved in the standard OMB review process, but at a high potential cost. Untested messages can waste communication resources and opportunities because the messages can be perceived as unclear or irrelevant. Untested messages can also have unintended consequences, such as jeopardizing the credibility of Federal health officials.

There is no cost to the respondents other than their time. The total estimated annualized burden hours are 2,470.

ESTIMATED ANNUALIZED BURDEN HOURS

Data collection method	Number of respondents per method	Number of responses per respondent	Average burden per response (in hours)
Central Location Intercept Interviews	300	12	5/60
Telephone Interviews	300	12	4/60
Individual In-depth Interview (Cognitive Interviews)	200	10	6/60
Focus Group Screenings	900	10	3/60
Focus Groups	300	20	8/60
Online Surveys	400	12	6/60

Dated: June 9, 2008.

Maryam I. Daneshvar,

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

[FR Doc. E8–13485 Filed 6–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Cardiometabolic Risk Factors Among Women of Reproductive Age, Potential Extramural Project 2008–R–07

Correction: This notice was published in the **Federal Register** on April 16, 2008, Volume 73, Number 74, page 20680. The aforementioned meeting has been rescheduled to the following:

Time and Date: 1 p.m.–3 p.m., June 18, 2008 (Closed).

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333. Telephone (404) 498–1194.

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: June 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–13442 Filed 6–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Validation of a Policy and Environmental Assessment Tool for Child Care Programs, Potential Extramural Project 2008–R–05

Correction: This notice was published in the **Federal Register** on April 16, 2008, Volume 73, Number 74, page 20679. The aforementioned meeting has been rescheduled to the following:

Time and Date: 1 p.m.–3 p.m., June 18, 2008 (Closed).

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333. Telephone (404) 498–1194.

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: June 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–13443 Filed 6–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Feasibility Study of Using Cancer Registries and Other Data Sources To Track Measure of Care in Colorectal and Breast Cancer, Potential Extramural Project 2008–R–08

Correction: This notice was published in the **Federal Register** on April 16, 2008, Volume 73, Number 74, pages 20678–20679. The aforementioned meeting has been rescheduled to the following:

Time and Date: 1 p.m.–3 p.m., June 19, 2008 (Closed).

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333. Telephone (404) 498–1194.

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: June 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–13451 Filed 6–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Evaluation of Breastfeeding Promotion and Support Programs for African-American Women, Potential Extramural Project 2008–R–25

Correction: This notice was published in the **Federal Register** on April 18, 2008, Volume 73, Number 76, page 21138. The aforementioned meeting has been rescheduled to the following:

Time and Date: 1:00 p.m.–3:00 p.m., June 19, 2008 (Closed).

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road NE., Mailstop E21, Atlanta, GA 30333. Telephone (404) 498–1194.

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: June 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–13472 Filed 6–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Promoting Awareness of Birth Defects Prevention, Potential Extramural Project 2008–R–14

Correction: This notice was published in the **Federal Register** on April 16, 2008, Volume 73, Number 74, page 20679. The aforementioned meeting has been rescheduled to the following:

Time and Date: 1 p.m.–3 p.m., June 19, 2008 (Closed).

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333. Telephone (404) 498–1194.

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: June 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–13488 Filed 6–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Improving Postpartum Follow up in Women With a Gestational Diabetes-Affected Pregnancy, Potential Extramural Project (PEP) 2008–R–02

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time And Date: 1 p.m.–3 p.m., June 18, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. This notice was published in the **Federal Register** on April 16, 2008, Volume 73, Number 74, page 20677. Additional time is required to complete the review of all applications submitted for this PEP. Applications being reviewed at the June 18, 2008, meeting will be reviewed by the same members of the original panel.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of ''Improving Postpartum Follow up in Women with a Gestational Diabetes-Affected Pregnancy, PEP 2008–R–02.''

The National Center for Health Marketing determines that agency business requires its consideration of this matter on less than 15 days' notice to the public and that no earlier notice of this meeting was possible.

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

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: June 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–13491 Filed 6–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Type-2 Diabetes Prevention in Women with a Recent History of Gestational Diabetes Mellitus, Potential Extramural Project (PEP) 2008–R–04

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 1 p.m.–4 p.m., June 18, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. This notice was published in the **Federal Register** on April 17, 2008, Volume 73, Number 75, page 20927. Additional time is required to complete the review of all applications submitted for this PEP.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of ''Type-2 Diabetes Prevention in Women with a Recent History of Gestational Diabetes Mellitus, PEP 2008–R–04.''

The National Center for Health Marketing determines that agency business requires its consideration of this matter on less than 15 days notice to the public and that no earlier notice of the meeting was possible.

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404)498–1194. 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: June 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–13493 Filed 6–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Medicaid Program; Notice of Single-Source Grant Award to the States of Louisiana and Mississippi for the Grant Entitled ''Deficit Reduction Act-Hurricane Katrina Healthcare Related Provider Stabilization''

AGENCY: Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Single-Source Non-Competitive Supplemental Awards.

Funding Amount: $19,100,000.

Period of Performance: June 9, 2008–September 30, 2009.

CFDA: 93.776.

Authority: Section 6201(a)(4) of the Deficit Reduction Act of 2005 (DRA)

Purpose: The Secretary has authorized an additional $19.1 million in supplemental grant funds to be made available to the States of Louisiana and Mississippi. Based on the share of total Medicare inpatient payments made to each State's eligible general acute care hospitals and inpatient psychiatric facilities (IPFs) located in the Federal Emergency Management Agency (FEMA) designated counties/parishes in calendar year 2006 (the latest and most complete year of Medicare billing data available to us), funding is being allocated in the following proportions: 53 percent to Louisiana ($10,143,671) and 47 percent to Mississippi ($8,956,329).

Since its inception, the Provider Stabilization Grant (PSG) program has been used to fund State payments to general acute care hospitals, skilled nursing facilities, IPFs, and community mental health centers in impacted communities that may face financial pressures because of changing wage rates that are not yet reflected in Medicare prospective payment system (PPS) payment methodologies. For this third round of PSG funding, CMS determined that these supplemental grant funds would be used by the States to make payments to only those Medicare participating inpatient PPS (IPPS) hospitals and IPFs that are currently paid under a Medicare PPS and that are the most significantly, negatively impacted (financial or otherwise) related to Hurricane Katrina.

Although the States had significant discretion in determining the payment distribution methodology, the methodology had to clearly reflect the basis upon which the State would determine ''negative impact'' and then how each provider would receive an appropriate share of the funds. Grant funds may not be distributed to IPPS hospitals and IPFs that are not in operation or that are outside of the FEMA Hurricane Katrina designated counties/parishes for individual and public assistance. The States' payment methodologies were to specify the relevant time periods and any other factors that would be considered in distributing available grant funds according to the principles specified above, and were subject to approval by CMS.

The States were also allowed to choose to use a portion of the funds (not to exceed 20% of the grant) to address immediate, unmet, health care infrastructure needs that objective data indicate was caused as a direct result of Hurricane Katrina and or its subsequent flooding. This optional provision was also subject to CMS approval.

Under the authority of section 6201(a)(4) of the Deficit Reduction Act of 2005, the Secretary, Department of Health and Human Services, has invoked his authority to restore health care in impacted communities affected by Hurricane Katrina by offering this unique funding opportunity to enable States to make payments to assist general acute care hospitals and IPFs that are paid under a Medicare PPS, with the financial pressures that may result from changing wage rates in those impacted communities. Louisiana and Mississippi are the only States with knowledge and ability to administer a grant designed to affect impacted communities in their own respective States. For the reasons cited above, the Secretary has directed CMS to offer supplemental single-source awards to the States of Louisiana and Mississippi.

FOR FURTHER INFORMATION CONTACT: Wendy J. Alexander, Ph.D., Health Insurance Specialist, Finance Systems and Budget Group, Centers for Medicaid and State Operations, Centers for Medicare & Medicaid Services, Mail Stop S3–13–15, 7500 Security Boulevard, Baltimore, MD 21244, (410) 786–5245.

Authority: Section 6201(a)(4) of the Deficit Reduction Act of 2005 (DRA).

Dated: June 10, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8–13525 Filed 6–13–08; 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; Submission for Office of Management and Budget Review; 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 that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 16, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0277. Also include the FDA 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: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

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.

In the **Federal Register** of March 4, 2008 (73 FR 11648), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
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.

Dated: June 10, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–13522 Filed 6–13–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Sites for Assignment of Corps Personnel

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the listing of entities, and their Health Professional Shortage Area (HPSA) scores, that will receive priority for the assignment of National Health Service Corps (NHSC) personnel (Corps Personnel, Corps members) for the period July 1, 2008, through June 30, 2009, is posted on the NHSC Web site at *http://nhsc.bhpr.hrsa.gov/jobs/index.asp.* This list specifies which entities are eligible to receive assignment of Corps members who are participating in the NHSC Scholarship Program, the NHSC Loan Repayment Program, and Corps members who have become Corps members other than pursuant to contractual obligations under the Scholarship or Loan Repayment Programs. Please note that not all vacancies associated with sites on this list will be for Corps members, but could be for individuals serving an obligation to the NHSC through the Private Practice Option.

Eligible HPSAs and Entities

To be eligible to receive assignment of Corps personnel, entities must: (1) Have a current HPSA designation by the Office of Shortage Designation, Bureau of Health Professions, Health Resources and Services Administration; (2) not deny requested health care services, or discriminate in the provision of services to an individual because the individual is unable to pay for the services or because payment for the services would be made under Medicare, Medicaid, or the State Children's Health Insurance Program; (3) enter into an agreement with the State agency that administers Medicaid, accept payment under Medicare and the State Children's Health Insurance Program, see all patients regardless of their ability to pay, and use and post a discounted fee plan; and (4) be determined by the Secretary to have (a) A need and demand for health manpower in the area; (b) appropriately and efficiently used Corps members assigned to the entity in the past; (c) general community support for the assignment of Corps members; (d) made unsuccessful efforts to recruit; and (e) a reasonable prospect for sound fiscal management by the entity with respect to Corps members assigned there. Priority in approving applications for assignment of Corps members goes to sites that (1) Provide primary medical care, mental health, and/or oral health services to a primary medical care, mental health, or dental HPSA of greatest shortage, respectively; (2) are part of a system of care that provides a continuum of services, including comprehensive primary health care and appropriate referrals or arrangements for secondary and tertiary care; (3) have a documented record of sound fiscal management; and (4) will experience a negative impact on its capacity to provide primary health services if a Corps members is not assigned to the entity.

Entities that receive assignment of Corps personnel must assure that (1) the position will permit the full scope of practice and that the clinician meets the credentialing requirements of the State and site; and (2) the Corps member assigned to the entity is engaged in full-time clinical practice at the approved service location for a minimum of 40 hours per week with at least 32 hours per week in the ambulatory care setting. Obstetricians/gynecologists, certified nurse midwives (CNMs), and family practitioners who practice obstetrics on a regular basis, are required to engage in a minimum of 21 hours per week of outpatient clinical practice. The remaining hours, making up the minimum 40-hour per week total, include delivery and other clinical hospital-based duties. For all Corps personnel, time spent on-call does not count toward the 40 hours per week. In addition, sites receiving assignment of Corps personnel are expected to (1) Report to the NHSC all absences, including those in excess of the authorized number of days (up to 35 work days or 280 hours per contract year); (2) report to the NHSC any change in the status of an NHSC clinician at the site; (3) provide the time and leave records, schedules, and any related personnel documents for NHSC assignees (including documentation, if applicable, of the reason(s) for the termination of an NHSC clinician's employment at the site prior to his or her obligated service end date); and (4) submit a Uniform Data System (UDS) report. The UDS allows the site to assess the age, sex, race/ethnicity of, and provider encounter records for, its user population. The UDS reports are site specific. Providers fulfilling NHSC commitments are assigned to a specific

site or, in some cases, more than one site. The scope of activity to be reported in UDS includes all activity at the site(s) to which the Corps member is assigned.

Evaluation and Selection Process

In approving applications for the assignment of Corps members, the Secretary shall give priority to any such application that is made regarding the provision of primary health services to a HPSA with the greatest shortage. For the program year July 1, 2008, through June 30, 2009, HPSAs of greatest shortage for determination of priority for assignment of Corps personnel will be defined as follows: (1) Primary medical care HPSAs with scores of 14 and above are authorized for the assignment of Corps members who are primary care physicians, family nurse practitioners (NPs), physician assistants (PAs), or CNMs participating in the Scholarship Program; (2) mental health HPSAs with scores of 19 and above are authorized for the assignment of Corps members who are psychiatrists participating in the Scholarship Program; (3) dental HPSAs with scores of 17 and above are authorized for the assignment of Corps members who are dentists participating in the Scholarship Program; and (4) HPSAs (appropriate to each discipline) with scores of 17 and above are authorized for priority assignment of Corps members who are participating in the Loan Repayment Program. HPSAs with scores below 17 will be eligible to receive assignment of Corps personnel participating in the Loan Repayment Program only after assignments are made of those Corps members matching to those HPSAs receiving priority for placement of Corps members through the Loan Repayment Program (i.e., HPSAs scoring 17 or above). Placements made through the Loan Repayment Program in HPSAs with scores 16 or below will be made by decreasing HPSA score, and only to the extent that funding remains available. All sites on the list are eligible sites for individuals wishing to serve in an underserved area but who are not contractually obligated under the Scholarship or Loan Repayment Program. Note, that in response to the low number of NPs, PAs and CNMs in this placement cycle of NHSC Scholars, the primary care physician HPSA score has been applied to the entire primary care category. A listing of HPSAs and their scores is posted at *http://hpsafind.hrsa.gov/.*

Sites qualifying for automatic primary medical care and dental HPSA designations have been scored and may be authorized to receive assignment of Corps members if they meet the criteria outlined above and their HPSA scores are above the stated cutoffs. If there are any sites on the list with an unscored HPSA designation they are authorized for the assignment of Corps personnel participating in the Loan Repayment Program only, after assignments are made of those Corps members matching to scored HPSAs and only to the extent that funding remains available. When these HPSAs receive scores, these sites will then be authorized to receive assignment of Corps members if they meet the criteria outlined above and their newly assigned scores are above the stated cutoffs.

The number of new NHSC placements through the Scholarship and Loan Repayment Programs allowed at any one site are limited to the following:

(1) Primary Medical Care:

(a) Loan Repayment Program—no more than 2 allopathic (MD) or osteopathic (DO) physicians; and no more than a combined total of 2 NPs, PAs, or CNMs;

(b) Scholarship Program—no more than 2 physicians (MD or DO); and no more than a combined total of 2 NPs, PAs, or CNMs.

(2) Dental:

(a) Loan Repayment Program—no more than 2 dentists and 2 dental hygienists;

(b) Scholarship Program—no more than 1 dentist.

(3) Mental Health:

(a) Loan Repayment Program—no more than 2 psychiatrists (MD or DO); and no more than a combined total of 2 clinical or counseling psychologists, licensed clinical social workers, licensed professional counselors, marriage and family therapists, or psychiatric nurse specialists;

(b) Scholarship Program—no more than 1 psychiatrist.

Application Requests, Dates and Address

The list of HPSAs and entities that are eligible to receive priority for the placement of Corps personnel may be updated periodically. Entities that no longer meet eligibility criteria, including HPSA score, will be removed from the priority listing. Entities interested in being added to the high priority list must submit an NHSC Recruitment and Retention Assistance Application to: National Health Service Corps, 5600 Fishers Lane, Room 8A–08, Rockville, MD 20857, fax 301–594–2721. These applications must be submitted on or before the deadline date of March 27, 2009. Applications submitted after this deadline date will be considered for placement on the priority placement list in the following program year. Any changes to this deadline will be posted on the NHSC Web site at *http://nhsc.bhpr.hrsa.gov.*

Entities interested in receiving application materials may do so by calling the HRSA call center at 1–800–221–9393. They may also get information and download application materials from: *http://nhsc.bhpr.hrsa.gov/applications/rraa.asp.*

Additional Information

Entities wishing to provide additional data and information in support of their inclusion on the proposed list of HPSAs and entities that would receive priority in assignment of Corps members, must do so in writing no later than July 16, 2008. This information should be submitted to: Mark Pincus, Director, Division of Site and Clinician Recruitment, Bureau of Clinician Recruitment and Service, 5600 Fishers Lane, Room 8A–55, Rockville, MD 20857. This information will be considered in preparing the final list of HPSAs and entities that are receiving priority for the assignment of Corps personnel.

Paperwork Reduction Act: The Recruitment & Retention Assistance Application has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0230 and expires August 31, 2008.

The program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: June 6, 2008.

Elizabeth M. Duke,

Administrator.

[FR Doc. E8–13454 Filed 6–13–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; National Institutes of Health Construction Grants—42 CFR Part 52b (Final Rule)

Summary: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: National Institutes of Health Construction Grants—42 CFR Part 52b (Final Rule). *Type of Information Collection Request:* EXTENSION of No. 0925–0424, expiration date 8/31/2008. *Need and Use of the Information Collection:* This request is for OMB review and approval of an extension for the information collection and recordkeeping requirements contained in the regulation codified at 42 CFR Part 52b. The purpose of the regulation is to govern the awarding and administration of grants awarded by NIH and its components for construction of new buildings and the alteration, renovation, remodeling, improvement, expansion, and repair of existing buildings, including the provision of equipment necessary to make the buildings (or applicable part of the buildings) suitable for the purpose for which it was constructed. In terms of reporting requirements: Section 52b.9(b) of the regulation requires the transferor of a facility which is sold or transferred, or owner of a facility, the use of which has changed, to provide written notice of the sale, transfer or change within 30 days. Section 52b.10(f) requires a grantee to submit an approved copy of the construction schedule prior to the start of construction. Section 52b.10(g) requires a grantee to provide daily construction logs and monthly status reports upon request at the job site. Section 52b.11(b) requires applicants for a project involving the acquisition of existing facilities to provide the estimated cost of the project, cost of the acquisition of existing facilities, and cost of remodeling, renovating, or altering facilities to serve the purposes for which they are acquired. In terms of recordkeeping requirements: Section 52b.10(g) requires grantees to maintain daily construction logs and monthly status reports at the job site. *Frequency of Response:* On occasion. *Affected Public:* Non-profit organizations and Federal agencies. *Type of respondents:* Grantees. The estimated respondent burden is as follows:

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Reporting:				
Section 52b.9(b)	1	1	.50	.50
Section 2b.10(f)	60	1	1.0	60
Section 2b.10(g)	60	12	1.0	720
Section 2b.11(b)	100	1	1.0	100
Recordkeeping:				
Section 2b.10(g)	60	260	1.0	15,600
Totals	281			16,480.5

The annualized cost to the public, based on an average of 60 active grants in the construction phase, is estimated at: $576,818. There are no Capital Costs to report. There are no operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information and recordkeeping are necessary for the proper performance of the function 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 and recordkeeping, including the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected and the recordkeeping information to be maintained; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection and recordkeeping techniques of other forms of information technology.

For Further Information Contact: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, Division of Management Support, National Institutes of Health, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, Maryland 20852; call 301–496–4607 (this is not a toll-free number) or e-mail your request to *jm40z@nih.gov*.

Comments Due Date: Comments regarding this information collection and recordkeeping are best assured of having full effect if received on or before August 15, 2008.

Dated: June 10, 2008.

Jerry Moore,

Regulations Officer, National Institutes of Health.

[FR Doc. E8–13388 Filed 6–13–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Acquired Immunodeficiency Syndrome Research Review Committee; July 2008 AIDS Research Review Committee meeting.

Date: July 9, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel and Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Roberta Binder, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3130, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–7966, *rb169n@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856,

Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 5, 2008.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–13168 Filed 6–13–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2008–0056]

The National Infrastructure Advisory Council

AGENCY: Directorate for National Protection and Programs, Department of Homeland Security.

ACTION: Committee Management; Notice of Federal Advisory Council Meeting.

SUMMARY: The National Infrastructure Advisory Council will meet on July 8, 2008 in Washington, DC. The meeting will be open to the public.

DATES: The National Infrastructure Advisory Council will meet Tuesday, July 8, 2008 from 1:30 p.m. to 4:30 p.m. Please note that the meeting may close early if the committee has completed its business. For additional information, please consult the NIAC Web site, *http://www.dhs.gov/niac*, or contact Tim McCabe by phone at 703–235–2888 or by e-mail at *timothy.mccabe@associates.dhs.gov*.

Location: The meeting will be held in Washington, DC. The specific location has not yet been determined. The meeting location will be published in the **Federal Register** and posted on the NIAC Web site prior to the meeting.

ADDRESSES: While we will be unable to accommodate oral comments from the public, written comments may be sent to Nancy Wong, Department of Homeland Security, Directorate for National Protection and Programs, Washington, DC 20528. Written comments should reach the contact person listed below by June 25, 2008. Comments must be identified by DHS–2008–0056 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: timothy.mccabe@associates.dhs.gov*. Include the docket number in the subject line of the message.
- *Fax:* 703–235–3055.
- *Mail:* Nancy Wong, Department of Homeland Security, Directorate for National Protection and Programs, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Infrastructure Advisory Council, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy Wong, NIAC Designated Federal Officer, Department of Homeland Security, Washington, DC 20528; telephone 703–235–2888.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The National Infrastructure Advisory Council shall provide the President through the Secretary of Homeland Security with advice on the security of the critical infrastructure sectors and their information systems.

The National Infrastructure Advisory Council will meet to address issues relevant to the protection of critical infrastructure as directed by the President. The July 8, 2008 meeting will include status reports from its two Working Groups:

(1) The Frameworks for Dealing with Disasters and Related Interdependencies Working Group and

(2) The Critical Partnership Strategic Assessment Working Group.

Procedural

While this meeting is open to the public, participation in The National Infrastructure Advisory Council deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the NIAC Secretariat at 703–235–2888 as soon as possible.

Dated: June 5, 2008.

Nancy Wong,

Designated Federal Officer for the NIAC.

[FR Doc. E8–13523 Filed 6–13–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2007–0077]

Privacy Act of 1974; the United States Visitor and Immigrant Status Indicator Technology (US–VISIT), Technical Reconciliation Analysis Classification System (TRACS) System of Records

AGENCY: Privacy Office; Department of Homeland Security.

ACTION: Notice of Privacy Act system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Homeland Security, National Protection and Programs Directorate, United States Visitor and Immigrant Status Indicator Technology program is giving notice that it proposes to add a new system of records, entitled the Technical Reconciliation Analysis Classification System. The Technical Reconciliation Analysis Classification System is an information management tool used to enhance the integrity of the United States immigration system by detecting, deterring, and pursuing immigration fraud, and identifying persons who pose a threat to national security and/or public safety.

DATES: The established system of records will be effective July 16, 2008. Written comments must be submitted on or before July 16, 2008.

ADDRESSES: You may submit comments, identified by DHS–2007–0077, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: TRACS System Manager, US–VISIT Program, U.S. Department of Homeland Security, Washington, DC 20528 (202) 298–5200 or by facsimile (202) 298–5201. For privacy issues please contact:

Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), United States—Visitor and Immigrant Status Indicator Technology (US–VISIT) program is establishing a Privacy Act system of records known as Technical Reconciliation Analysis Classification System (TRACS). This system of records is an information management tool used for management and analysis of US–VISIT records. TRACS will help enhance the integrity of the United States immigration system by detecting, deterring, and pursuing immigration fraud, and by identifying persons who pose a threat to national security and/or public safety. TRACS will consist of paper files and electronic databases.

The Secretary of the Department of Homeland Security has delegated to NPPD and US–VISIT the responsibility for enhancing the security of U.S. citizens and visitors; facilitating safe, efficient, and legitimate travel to the U.S.; promoting border security and the integrity of the immigration system; safeguarding the privacy of visitors to the U.S.

NPPD and US–VISIT have also been delegated authority for assisting in the prevention of immigration identity fraud or theft; and serving law enforcement, border officials, and others who make decisions on immigration matters, including decisions on immigration benefits and status, by identifying aliens seeking permission to enter, entering, visiting, residing in, changing status within, or exiting the U.S.

Finally, NPPD and US–VISIT have been delegated the responsibility for providing technical assistance and analytic services to other DHS functions and components and to other Federal agencies, as well as to State, local, tribal, and foreign governments, including multinational and international organizations, to better protect the Nation's physical and virtual borders.

To discharge the above responsibilities, TRACS will be used to: (1) Identify individuals who have remained in the United States beyond their authorized period of admission (overstays); (2) maintain information on why individuals are promoted to or demoted from the Automated Biometric Identification System (IDENT) list of subjects of interest; (3) provide the means for additional research in regards to individuals whose biometrics are collected by DHS, and subsequently matched to the list of subjects of interest during a routine IDENT query. A query of this nature would take place following a background check or security screening relating to the individual's hiring or retention, performance of a job function, or the issuance of a license or credential, allowing them access to secured facilities to perform mission and non-mission related work. Examples of this include credentialing of Federal, non-Federal, and contractor employees who work within the secured areas of our nation's airports; (4) to further analyze information about individuals who may be identified as a subject of interest following a routine query against IDENT while applying for visas or other benefits on behalf of domestic partners, such as the U.S. Department of State or foreign partners, as is the case with the United Kingdom Border Agency's (UKBA) International Group Visa Services program, which supports the DHS mission; and (5) to provide information in response to queries from law enforcement and intelligence agencies charged with national security, law enforcement, immigration, or other DHS mission-related functions.

Specifically, TRACS will be used for the analysis of overstays, for changes to the IDENT subject of interest lists, law enforcement and intelligence research, and to assist in developing and fostering foreign partnerships that enhance the goals and mission of US–VISIT, such as the work being done in association with the UKBA's International Group Visa Services project.

To identify possible overstays, US–VISIT reviews and analyzes information in the Arrival and Departure Information System (ADIS), a US–VISIT system used for the storage and use of biographic, biometric indicator, and encounter data on aliens who have applied for entry, entered, or departed the United States. ADIS consolidates information from various systems in order to provide a repository of data held by DHS for pre-entry, entry, status management, and exit tracking of immigrants and non-immigrants. Its primary use is to facilitate the investigation of subjects of interest who may have violated their immigration status by remaining in the United States beyond their authorized stay. To assist in the resolution of overstays, information related to them may be copied to TRACS for review and further analysis against other US–VISIT programs and systems to better determine their status.

Regarding changes to the IDENT Subject of Interest List, in order to maintain the integrity of the immigration and customs programs, DHS maintains records within IDENT to identify individuals who may present a terrorist threat to the United States as well as those individuals who may not be allowed to enter the country because of past violations of immigration or customs law. An individual is either promoted to or demoted from the list of subjects of interest within IDENT. As IDENT is not a case management system, it merely records the change, not the justification for the change. TRACS will have the ability to serve as a case management system and not only use the information regarding the changes to the list of subjects of interest that is recorded in IDENT but also to record and store the actual justification for any change. The user will also have the ability to enter data in pre-determined selectable categories or manually by either free text or by cutting and pasting information retrieved from other systems and placing it into a workspace in TRACS so that analysis can be performed.

For assistance in background checks and security clearance processes for employment at DHS or receipt of a DHS license or credential, applicants may have their information searched against ADIS or IDENT records. Clearance, employment eligibility, or other license or credential applications that have a match against ADIS or IDENT may require additional research regarding the applicant. Such information would be maintained and tracked in TRACS.

Regarding analyzing information on behalf of domestic or foreign partners, US–VISIT will assist its partners in analyzing information held by US–VISIT where such analysis supports the DHS mission. For example, for the UKBA visa services project, US–VISIT will receive biometric information from the UK for UK visa applicants and query their biometric information against the IDENT list of subjects of interest. US–VISIT will then provide the results from the query back to the UK for purposes of visa adjudication.

Regarding law enforcement and intelligence research, US–VISIT may also receive requests from other law enforcement agencies, such as Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and the Federal Bureau of Investigation (FBI), as well as from other intelligence agencies, to provide further information regarding the immigration status for individuals of interest to those

organizations. US–VISIT tracks these requests and the responses in TRACS.

Information in TRACS comes primarily from ADIS and IDENT. TRACS may also contain information from other DHS component programs or systems, or publicly available source systems that are manually queried while researching a particular case. Data researched or identified through publicly available source systems, such as the internet, will be identified and referenced in the individual's record in TRACS. If it becomes routine for a specific public source system(s) to be used on a regular basis, the PIA will be updated to reflect this system(s) as a common source of information and data. For research conducted, based on an external request, information may also be provided from the requesting entity, as described below for the DHS/United Kingdom Border Agency's (UKBA) International Group Visa Services program.

The data contained in TRACS is primarily from the US–VISIT systems Arrival and Departure Information System (ADIS) (72 FR 47057, Arrival and Departure Information System (ADIS), System of Records Notice, August 22, 2007); the Automated Biometric Identification System (IDENT) (72 FR 31080, Automated Biometric Identification System (IDENT), System of Records Notice, June 5, 2007); and a Customs and Border Protection (CBP) system called the Treasury Enforcement Communications System (TECS) (66 FR 53029, Treasury Enforcement Communications System (TECS), System of Records Notice, October 18, 2001). TRACS also receives data from a Department of State (DOS) system called the Consolidated Consular Database (CCD); the Student and Exchange Visitor Information System (SEVIS) (70 FR 14477, Student and Exchange Visitor Information System (SEVIS), System of Records Notice, March 22, 2005); the Central Index System (CIS) (72 FR 1755, Central Index System (CIS), System of Records Notice, January 16, 2007); the Computer-linked Application Information Management System (CLAIMS 3 and 4) (64 FR 18052, Computer Linked Application Information Management System (CLAIMS 3 and 4), System of Records Notice, April 13, 1999); the Refugees, Asylum & Parole System (RAPS); the Deportable Alien Control System (DACS) (67 FR 64136, Deportable Alien Control System (DACS), System of Records Notice, October 17, 2002); and the Enforcement Case Tracking System (ENFORCE). TRACS also contains data from Web searches for addresses and phone numbers.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents (LPRs). As a matter of policy, DHS extends administrative Privacy Act protections to all individuals, including aliens who are not LPRs, on whom a system of records maintains information. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to Congress.

System of Records DHS/NPPD/USVISIT–003

SYSTEM NAME:

The United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program; Technical Reconciliation Analysis Classification System (TRACS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program Office Headquarters in Washington, DC and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this notice consist primarily of persons who are not United States citizens or legal permanent residents (LPRs). However, it will contain data on: (1) U.S. citizens or LPRs who have a connection to the DHS mission (e.g., individuals who have submitted a visa application to the UK (based on the January 11, 2008 signed Memorandum of Understanding between the Department of Homeland Security of the United States of America and the [UKBA International Group Visa Services program formerly known as] UKVISAS as the Authority Appointed by the Secretary of State for the Home Department and the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom of Great Britain and Northern Ireland, regarding Information Vetting and Sharing), or have made requests for a license or credential as part of a background check or security screening in connection with their hiring or retention, performance of a job function or the issuance a license or credential for employment at DHS); (2) U.S. citizens and LPRs who have an incidental connection to the DHS mission (e.g., individuals living at the same address as individuals who have remained in this country beyond their authorized stays); and (3) individuals who have, over time, changed their status and became U.S. citizens or LPRs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include: (1) Biometric data (to include, but not limited to, photographs and fingerprints); (2) biographic data held in Government system (to include, but not limited to, names, aliases, date of birth, nationality or other personal descriptive data such as address and phone number); (3) biometric indicator data (to include, but not limited to, fingerprint identification numbers); (4) encounter data (i.e. information that provides the context of the interaction with an individual, such as encounters concerning border entry screening, immigration enforcement, and submission of visa applications); and (5) commercial or publicly available data such as name, address, and phone number as found in open source searches of internet phone directories. The records described in (1)–(5) above may also include related contextual and information management data and metadata, such as: encounter location, time of encounter, document types, document numbers, document issuance information, conveyance information, and address while in the U.S.

Information management data is used to manage ongoing analyses or investigations and may include, but is not limited to, case resolution, status, comments and notes from interviewers or by the analysts assigned to the case(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 U.S.C. 202, 8 U.S.C. 1103, 1158, 1187, 1201, 1225, 1324, 1357, 1360, 1365a, 1365b, 1379, and 1732. Specifically, the data is collected and maintained in TRACS under the authority provided by: The Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106–215; The Visa Waiver Permanent Program Act of 2000 (VWPPA), Public Law 106–396; The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (U.S.A. PATRIOT Act), Public Law 107–56; The Enhanced Border Security and Visa Entry Reform Act (Border Security Act), Public Law 107–173; The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458; The Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53; and The Immigration and Nationality Act (INA), Title 8, United States Code, as delegated by the Secretary, Department of Homeland Security.

PURPOSE(S):

The purpose of this system is to serve as an information management tool used to enhance the integrity of the United States' immigration system by detecting, deterring, and pursuing immigration fraud, and identifying persons who pose a threat to national security and/or public safety, and to assist in supporting credentialing activities. TRACS is used to: identify individuals who have remained in the United States beyond their authorized period of admission (overstays); maintain information on why individuals are promoted to, or demoted from, the IDENT list of subjects of interest; assist in determining eligibility in connection with: Hiring or retention, issuance of a license or credential as part of a background check or security screening in connection with their hiring or retention, or performance of a job function or the issuance a license or credential for employment at DHS; and to analyze information regarding immigration status, including applications to enter and exit the United States, as well as the actual physical entries into and exits from the United States, in support of law enforcement and intelligence agencies. In addition, TRACS will be used to analyze data quality, integrity, and utility; and analyze data to establish trends and patterns in the data for future enforcement actions.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the United States Department of Justice (including United States Attorney offices) or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, or to the court or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity), or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS' efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. The individuals who provide information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, foreign, multinational, or international law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To appropriate Federal, State, local, tribal, foreign, multinational, or international governmental agencies seeking information on the subjects of wants, warrants, or lookouts, or any other subject of interest, for purpose related to administering or enforcing the law, national security, immigration, or preparedness and critical infrastructure protection, where consistent with a DHS mission-related function as determined by DHS.

I. To appropriate Federal, State, local, tribal, foreign, multinational, or international government agencies charged with national security, law enforcement, immigration, intelligence, preparedness and critical infrastructure protection, or other DHS mission-related functions in connection with the hiring or retention by such an agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting of a contract, or the issuance of a license, grant, loan, or other benefit by the requesting agency.

J. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS' officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

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

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM. Information may also be stored in secured case file folders, cabinets, safes, or a variety of secured electronic or computer databases and storage media to include data and materials introduced through legacy systems (e.g. spreadsheets).

RETRIEVABILITY:

Records may be retrieved by a variety of data elements including, but not limited to, name, place and date of arrival or departure, document number, and other personal identifiers.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. The system maintains a real-time auditing function of individuals who access the system. Additional safeguards may vary by component and program. The system is protected through multi-layer security mechanisms. The protective strategies are physical, technical, administrative, and environmental in nature, and provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, user authentication, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

RETENTION AND DISPOSAL:

The following proposal for retention and disposal is pending approval with National Archives and Records Administration (NARA): Data will be disposed of when the information regarding the potential subject of interest has either been adjudicated or when the 75 year retention schedule has been met. Seventy five years is the retention period of IDENT and ADIS, the primary source systems of TRACS. Because TRACS is frequently used to establish and track decisions that affect the list of subjects of interest and overstay status in IDENT and ADIS, it is necessary that a retention period correspond to these systems.

SYSTEM MANAGER AND ADDRESS:

TRACS System Manager, US–VISIT Program, U.S. Department of Homeland Security, Washington, DC 20528.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts''. If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty or perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose form the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

A portion of this system is exempted from this requirement pursuant to 5 U.S.C. 552a (j)(2), (k1), (k)(2), and (k)(5). An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received. DHS will review and comply appropriately with information requests on a case by case basis. An individual desiring copies of records maintained in this system should direct his or her request to the FOIA Officer: See: ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

A portion of this system is exempted from this requirement pursuant to 5 U.S.C. 552a (j)(2), (k)(1), (k)(2), and (k)(5). An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received. DHS will review and comply appropriately with information requests on a case by case basis. Requests for access or correction of records in this system may be made through the Traveler Redress Inquiry Program (TRIP) at *http://www.dhs.gov/trip* or via mail, facsimile or e-mail in accordance with instructions available at *http://www.dhs.gov/trip*. See: ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Basic information contained in this system is supplied by individuals covered by this system, and other

Federal, State, local, tribal, or foreign government systems; private citizens; and public sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f); and (g) pursuant to 5 U.S.C. 552a(j)(2). In addition, the Secretary of Homeland Security has exempted this system from 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), (k)(2), and (k)(5).

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–13383 Filed 6–13–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5188–N–08]

Notice of Proposed Information Collection: Comment Request, Environmental Reviews

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: *Comments Due Date:* August 15, 2008

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Pamela Williams, Reports Liaison Officer, Department of Housing Urban and Development, 451 7th Street, SW., Room 7234, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Environment and Energy, Department of Housing and Urban Development, Room 7244, 451 7th Street, SW., Washington, DC 20410–7000.

For telephone and e-mail communication, contact Walter Prybyla, Environmental Review Division, (202) 402–4466 or e-mail: *Walter_Prybyla@hud.gov* . This phone number is not toll-free. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as Amended).

This Notice is soliciting comments from members of the public and affected 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: Environmental Review of Proposed Housing Development.

OMB Control Number, if applicable: 2506–0177.

Description of the need for the information and proposed use: The information collection applies to applicants seeking HUD financial assistance for their project proposals and is used by HUD for the performance of the Department's compliance with the National Environmental Policy Act and related federal environmental laws and authorities in accordance with HUD environmental regulations, 24 CFR Part 50: ''Protection and Enhancement of Environmental Quality.''

Agency form numbers, if applicable: None.

The total numbers of hours needed to prepare the information collection is approximately eight hours. The number of respondents is approximately 2,600. The frequency of response is a one-time collection. The proposed information collection is for the extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 6, 2008.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E8–13396 Filed 6–13–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–39]

Household Outcomes Survey for FEMA's Alternative Housing Pilot Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The proposed information collection will collect household outcome data from families who have received housing under FEMA's Alternative Housing Pilot Program (AHPP). HUD is conducting an evaluation of AHPP. Four States affected by Hurricanes Katrina and Rita received AHPP grants to test out alternative approaches to providing temporary housing after a disaster. HUD is charged with measuring what benefits and costs are associated with each of the alternatives being implemented by the States. Measuring the program impact on health, satisfaction, and general well-being of the occupants is a key part of the evaluation. This household outcomes survey will collect information that will be used to evaluate the impact of various housing alternatives on the quality of life of households who participate in the program.

DATES: *Comments Due Date:* July 16, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–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: Household Outcomes Survey for FEMA's Alternative Housing Pilot Program.

OMB Approval Number: 2528–NEW.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The proposed information collection will collect household outcome data from families who have received housing under FEMA's Alternative Housing Pilot Program (AHPP). HUD is conducting an evaluation of AHPP. Four States affected by Hurricanes Katrina and Rita received AHPP grants to test out alternative approaches to providing temporary housing after a disaster. HUD is charged with measuring what benefits and costs are associated with each of the alternatives being implemented by the States. Measuring the program impact on health, satisfaction, and general well-being of the occupants is a key part of the evaluation. This household outcomes survey will collection information that will be used to evaluate the impact of various housing alternatives on the quality of life of households who participate in the program.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	747	1		0.749		560

Total Estimated Burden Hours: 560.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 5, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–13397 Filed 6–13–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–R–2008–N0143; 60138–1265–6CCP–S3]

Pathfinder National Wildlife Refuge, Wyoming

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce that the draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Pathfinder National Wildlife Refuge is available. This draft CCP/EA describes how the Service intends to manage the refuge for the next 15 years. We request public comment.

DATES: To ensure consideration, we must receive your written comments on the draft CCP/EA by July 16, 2008.

ADDRESSES: Please provide written comments to Toni Griffin, Planning Team Leader, Division of Refuge Planning, Branch of Comprehensive Conservation Planning, Mountain-Prairie Region, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; via facsimile at 303–236–4792; or electronically to *toni_griffin@fws.gov*. A copy of the CCP/EA may be obtained by writing to U.S. Fish and Wildlife Service, Division of Refuge Planning, 134 Union Boulevard, Suite 300, Lakewood, Colorado 80228; or by download from *http://mountain-prairie.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Toni Griffin, 303–236–4378 (phone) or John Esperance, 303–236–4369 (phone).

SUPPLEMENTARY INFORMATION: Located in central Wyoming in a high plains basin near the headwaters of the Platte-Kansas Ecosystem, Pathfinder National Wildlife Refuge (NWR) lies approximately 47 miles southwest of Casper, Wyoming. The Pathfinder NWR is managed by Service staff headquartered at the Arapaho NWR near Walden, Colorado.

Pathfinder NWR was established by Executive Order 7425, August 1, 1936, which designated the Pathfinder Wildlife Refuge ''as a refuge and breeding ground for birds and other wildlife.'' Pathfinder NWR was established as an overlay refuge on Bureau of Reclamation lands. As such, primary jurisdiction of these lands remains under the authority of the Bureau of Reclamation. The Bureau of Reclamation administers lands within the Pathfinder Project boundary for North Platte Project purposes including flood control, irrigation, and hydroelectric power generation. A Memorandum of Agreement specifies the management responsibilities of the U.S. Fish and Wildlife Service while preserving the autonomy of Bureau of Reclamation to manage Pathfinder Dam and Reservoir.

This draft CCP/EA identifies and evaluates three alternatives for managing the refuge for the next 15 years. Alternative A, the No Action alternative, reflects the current management of the refuge. It provides the baseline against which to compare the other alternatives. Refuge habitats would continue to be minimally managed on an opportunistic schedule that may maintain, or most likely would result in further decline in, the diversity of vegetation and wildlife species. Only limited data collection and monitoring of refuge habitats and wildlife species would occur on the refuge. Outreach and partnerships would continue at present levels.

Management activities under alternative B would be increased. Upland habitats would be evaluated and managed for the benefit of migratory bird species. Monitoring and management of invasive species on the refuge would be increased. With

additional staffing, the Service would collect baseline biological information for wildlife and habitats. Wildlife-dependent recreation opportunities would be provided and enhanced where compatible with refuge purposes. Efforts would be increased in the operations and maintenance of natural resources on the refuge and to maintain and develop partnerships that promote wildlife and habitat research and management.

Alternative C is the Service's proposed action and basis for the draft comprehensive conservation plan. Under Alternative C, the Memorandum of Agreement between the Bureau of Reclamation and the Service would be modified to eliminate Service interest in lands (approximately 10,800 acres) that are difficult to manage and provide minimal opportunity to improve wildlife habitat. Remaining refuge areas would be managed similar to those actions described in Alternative B. This would enable the Service to focus efforts on manageable lands, thereby enhancing refuge management and efficiently directing refuge resources toward accomplishing the mission of the Refuge System.

The proposed action (Alternative C) was selected because it best meets the purposes and goals of the refuge, as well as the mission and goals of the National Wildlife Refuge System. The proposed action will also benefit federally listed species, shore birds, migrating and nesting waterfowl and resident wildlife. Environmental education and partnerships will result in improved wildlife-dependent recreational opportunities. Cultural and historical resources as well as federally listed species will be protected.

Opportunity for public input will be provided at a public meeting to be scheduled soon. The specific date and time for the public meeting is yet to be determined, but will be announced via local media and a planning update. All information provided voluntarily by mail, by phone, or at public meetings (*e.g.,* names, addresses, letters of comment, input recorded during meetings) becomes part of the official public record. If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information. The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; Executive Order 12996; the National Wildlife Refuge System Improvement Act of 1997; and Service policies and procedures for compliance with those laws and regulations.

Dated: June 5, 2008.

Sharon R. Rose,

Acting Regional Director.

[FR Doc. E8–13469 Filed 6–13–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0129; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by July 16, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703–358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703–358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: University of Texas at Austin, Austin, TX, PRT–182099

The applicant requests a permit to transport biological samples from the following species: Lowland gorilla *(Gorilla gorilla gorilla),* pygmy chimpanzee *(Pan paniscus),* chimpanzee *(Pan troglodytes),* Borneo orangutan *(Pongo pygmaeus pygmaeus),* and Sumatran orangutan *(Pongo pygmaeus abelii)* from the Coriell Institute for Medical Research, Camden, New Jersey for the purpose of enhancement of the species through scientific research. This notification covers activities conducted by the applicant for a five-year period.

Applicant: Thomas E. Tate, Glendale, CA, PRT–182074

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus pygargus pygargus)* culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Patrick J. Mulligan, Dallas, TX, PRT–180778

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus pygargus pygargus)* culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: May 9, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–13450 Filed 6–13–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–08–1320–EL; WVES–50560; WVES–50556]

Notice of Availability of the East Lynn Lake Coal Lease Draft Land Use Analysis and Draft Environmental Impact Statement and Notice of Hearing, Wayne County, West Virginia

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management (BLM) and its cooperating agencies have prepared a Draft Land Use Analysis and Draft Environmental Impact Statement (DLUA/DEIS) to analyze the potential impacts of two Federal Coal Lease By Applications (LBAs), WVES–50556 and WVES–50560, totaling 13,089.55 acres at the

U.S. Army Corps of Engineers' (USACE) East Lynn Lake Project in Wayne County, West Virginia. By this notice, the BLM announces the beginning of a 90-day public review and comment period and notice of a public hearing for the DLUA/DEIS, Maximum Economic Recovery (MER), and Fair Market Value (FMV) pursuant to the 43 Code of Federal Regulations (CFR) 3425.4. The public is invited to review and comment on the DLUA/DEIS, MER, and FMV.

DATES: Comments will be accepted for 90 days following the date that the Environmental Protection Agency (EPA) publishes its Notice of Availability for this DLUA/DEIS in the **Federal Register**. The BLM will hold the public hearing at 7 p.m. EDT, on July 31, 2008, at the Town Hall, 1300 Norfolk Avenue, Wayne, West Virginia. The BLM will announce this public hearing as well as any future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

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

- *E-mail:* *EastLynnLakeComments@blm.gov*.
- *Mail:* BLM–ES Milwaukee Field Office, Attn: Chris Carusona, 626 E. Wisconsin Ave., Suite 200, Milwaukee, WI 53202.
- *Facsimile:* 414–297–4409, Attn: Chris Carusona.

FOR FURTHER INFORMATION CONTACT: Chris Carusona, Planning and Environmental Coordinator, at 414–297–4463, (*Chris_Carusona@blm.gov*), or at the location listed in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: The BLM is considering issuing two coal leases as a result of applications made by Argus Energy WV, LLC (Argus) and Rockspring Development, Inc. (Rockspring) to lease the Federal coal in the East Lynn Lake Project area in Wayne County, West Virginia. Argus submitted a coal LBA (WVES–50556) to BLM for 7,639.63 acres bordering a portion of the southern shore of East Lynn Lake and Rockspring submitted a coal LBA (WVES–50560) for 5,449.92 acres that borders a portion of the north shore of the lake. East Lynn Lake is located approximately 25 miles south of Huntington, West Virginia, and is managed by the USACE for flood control, recreation, and wildlife. The DLUA/DEIS analyzes and discloses to the public direct, indirect, and cumulative environmental impacts of issuing Federal coal leases in the East Lynn Lake Project area. A copy of the DLUA/DEIS will be sent to affected Federal, State, and local government agencies; persons and entities identified as potentially being affected by a decision to lease the Federal coal in this area; and persons who indicated to the BLM that they wanted to receive a copy of the DLUA/DEIS. The purpose of the public hearing is to solicit comments on the DLUA/DEIS, on the proposed competitive lease sale and the MER and FMV of the Federal coal from the Federal coal tracts near East Lynn Lake.

Argus and Rockspring applied for the tracts in accordance with 43 CFR 3425 in order to extend the life of their existing underground mines they operate on adjacent private land. Argus estimated that the tracts in their application include 55 million tons of in-place Federal coal and Rockspring estimated that the tracts they applied for include 40.98 million tons of in-place Federal coal. The coal seam proposed to be mined is the Coalburg/Winifrede seam.

The State of West Virginia does not use the Public Land Rectangular Survey System to legally describe land tracts within the State, but instead utilizes metes and bounds property descriptions. Consequently, to avoid numerous pages of lengthy legal descriptions, the Federal coal reserves encompassed by the LBAs are described below by referencing the USACE mineral-tract numbers. It should be pointed out that referencing a mineral-tract number in the listing below does not necessarily mean the entire mineral tract is under application. More detailed property descriptions are available in the DLUA/DEIS.

Argus, LBA WVES–50556

Mineral Tract Numbers: 177M–14; 177M–12; 177M–11; 177M–1; 745M; 746M; 808; 840M; 843M; 846M; 1140M; 1140; 1301; 1313M; 1330M; 1717M; 1718M; 1810M; 1811M; 1813M; 2020M; 2321M; 2430M; 2431M; and 2737.

Approximately 7,639.63 acres in Wayne County, West Virginia.

Rockspring, LBA WVES–50560

Mineral Tract Numbers: 174M; 177M–2; 177M–1; 184M; 376ME–2; 375M; 376ME–1; 377M; 378M; 380M; 381M; 382M; 384M; 386M; 390ME–1; 395M; 430M; 517A; 517B; 545M; 547M; 548M; 550M; 553M; 554M; 556M; 745M; 1450M; 1451M; 1452M; 1453M; 1717M; and 1718M.

Approximately 5,449.92 acres in Wayne County, West Virginia.

The Notice of Intent (NOI) to prepare a LUA/EIS for Federal coal leasing administered by the BLM in Wayne County, West Virginia, was published in the **Federal Register** on July 14, 2005 (70 FR 40723–40725). The scope of the analysis was to include an assessment of the direct, indirect, and cumulative environmental, cultural, social science, and economic impacts associated with commercial leasing of the Federal coal under a range of alternatives.

The Office of Surface Mining Reclamation and Enforcement (OSM), the USACE, and the West Virginia Division of Natural Resources (DNR) are cooperating agencies in the preparation of the DLUA/DEIS.

Argus proposes to mine the Federal coal in the lease application area by underground methods extending from two of their existing underground mines located on private land to the south of the application area. Rockspring would similarly access their application area from their existing underground mine located on private lands north of their application area. No mining would occur beneath East Lynn Lake and no surface mining would take place. The existing mines for Argus and Rockspring have approved mining and reclamation plans from the West Virginia Department of Environmental Quality (DEQ) and an approved air quality permit from the Air Quality Division of the West Virginia DEQ.

It is reasonable to expect that Rockspring may wish to conduct exploratory drilling on their area of interest. Both companies may need to drill additional holes for mine plan purposes if leases were to be issued and mine plans approved.

The BLM is authorized to lease Federal coal, under the Mineral Leasing Act (43 CFR 3480.0–5(a)(25)) and the Water Resource and Development Act of 1999, for Federally owned coal at East Lynn Lake. The OSM, in cooperation with the State of West Virginia, issues mine permits under the Surface Mining Control and Reclamation Act.

The DLUA/DEIS analyzes leasing the East Lynn Lake Federal coal tracts as the Proposed Action and is the agency's preferred action. Under the proposed action, a competitive sale would be held and two leases issued for Federal coal in the tracts under applications by Argus and Rockspring. The DLUA/DEIS also analyzes the alternative of rejecting the applications to lease Federal coal as the No Action Alternative.

Requests to be included on the mailing list for this project and for copies of the DLUA/DEIS, paper copy or CD–ROM, or notification of the comment period or hearing date, or both, may be sent in writing, by facsimile, or electronically to the addresses previously stated at the beginning of this notice. The BLM asks that those submitting comments on the

DLUA/DEIS make them as specific as possible with reference to page numbers and chapters of the document. Comments that contain only opinions or preferences will not receive a formal response; however, they will be considered and included as part of the BLM decision-making process.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Copies of the DLUA/DEIS are available for public inspection at the Milwaukee Field Office address listed above, during regular business hours (7:30 a.m. through 4:30 p.m., CDT), Monday through Friday, with the exception of Federal holidays. The DLUA/DEIS is available on the following Web site: *http://www.es.blm.gov/EastLynnLake/index.php.*

Dated: February 14, 2008.

Juan Palma,

State Director, Eastern States.

Editorial Note: This document was received in the Office of the Federal Register on June 11, 2008.

[FR Doc. E8–13457 Filed 6–13–08; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 31, 2008. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 1, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

Los Angeles County

Apartments at 1342–1346 N. Hayworth Avenue, 1342–1346 N. Hayworth Ave., West Hollywood, 08000628

FLORIDA

Miami-Dade County

Seminole Cafe and Hotel, 55 S. Flagler Ave., Homestead, 08000641

Volusia County

Airport Clear Zone Archeological Site, (Archeological Resources of the 18th-Century Smyrnea Settlement of Dr. Andrew Turnbull MPS), Address Restricted, New Smyrna Beach, 08000639

Blanchette Archeological Site, (Archeological Resources of the 18th-Century Smyrnea Settlement of Dr. Andrew Turnbull MPS), Address Restricted, New Smyrna, 08000640

First Presbyterian Church Archeological Site, (Archeological Resources of the 18th-Century Smyrnea Settlement of Dr. Andrew Turnbull MPS), Address Restricted, New Smyrna Beach, 08000635

Grange Archeological Site, (Archeological Resources of the 18th-Century Smyrnea Settlement of Dr. Andrew Turnbull MPS), Address Restricted, New Smyrna Beach, 08000631

Hawks Archeological Site, (Archeological Resources of the 18th-Century Smyrnea Settlement of Dr. Andrew Turnbull MPS), Address Restricted, Edgewater, 08000636

Janet's Archeological Site, (Archeological Resources of the 18th-Century Smyrnea Settlement of Dr. Andrew Turnbull MPS), Address Restricted, New Smyrna Beach, 08000630

Old Fort Park Archeological Site, (Archeological Resources of the 18th-Century Smyrnea Settlement of Dr. Andrew Turnbull MPS), Address Restricted, New Smyrna Beach, 08000629

Old Stone Wharf Archeological Site, (Archeological Resources of the 18th-Century Smyrnea Settlement of Dr. Andrew Turnbull MPS), Address Restricted, New Smyrna Beach, 08000638

Sleepy Hollow Archeological Site, (Archeological Resources of the 18th-Century Smyrnea Settlement of Dr. Andrew Turnbull MPS), Address Restricted, New Smyrna Beach, 08000637

Turnbull Colonists' House Archeological Site, (Archeological Resources of the 18th-Century Smyrnea Settlement of Dr. Andrew Turnbull MPS), Address Restricted, New Smyrna Beach, 08000632

Turnbull Colonists' House No. 2 Archeological Site, (Archeological Resources of the 18th-Century Smyrnea Settlement of Dr. Andrew Turnbull MPS), Address Restricted, New Smyrna Beach, 08000633

White-Fox House Archeological Site, (Archeological Resources of the 18th-Century Smyrnea Settlement of Dr. Andrew Turnbull MPS), Address Restricted, New Smyrna Beach, 08000634

KANSAS

Cheyenne County

St. Francis City Park, (New Deal-Era Resources of Kansas MPS), 300 Block of E. Washington St., St. Francis, 08000645

Dickinson County

Elms Hotel, 201 W. 1st St., Abilene, 08000644

Graham County

Antelope Lake Park, (New Deal-Era Resources of Kansas MPS), 2.5 miles W and .5 miles N. of Jct. U.S. 24 and KS 85, Morland, 08000643

Miami County

Jackson Hotel, 139 W. Peoria St., Paola, 08000646

KENTUCKY

Campbell County

Fort Thomas Commercial District, 1011–1123 S. Fort Thomas Ave., 9–11 River Rd., 12–28 Midway Ct., Ft. Thomas, 08000653

Clark County

Woodford—Fishback—Venable Farm, 5696 Combs Ferry Rd., Winchester, 08000655

Fayette County

Hollywood Terrace Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS), Tates Creek Rd. and the rear property lines of the properties facing, Euclid, Tremont and Park Ave., Lexington, 08000652

Garrard County

Dr. Edwards House, 572 Danville St., Lancaster, 08000650

Jefferson County

Hadley, Mary Alica, House, 1638 Story Ave., Louisville, 08000649

Progress School, 200 Wood Rd., Louisville, 08000648

Logan County

Rhea Stadium, NE. corner of Intersection of E. 9th and Summer St., Russellville, 08000647

Oldham County

Ross-Hollenbach Farm, 4701 S. Hwy. 1694, Brownsboro, 08000651

TEXAS

Dallas County

Bromberg, Alfred and Juanita, House, 3201 Wendover Rd., Dallas, 08000658

Fayette County

Fayetteville Historic District, Roughly bounded by E. Bell, N. Thompson, E. Fayette, E. Main, Post Oak Lane, Fayetteville, 08000657

WISCONSIN

Milwaukee County

Florida and Third Industrial Historic District, 234–500 (even side) W. Florida St., 222 W.

Pittsburgh Ave., 212, 222, 305, 331 S. 3rd St., 400 S. 5th St., Milwaukee, 08000656

Request for MOVE has been made for the following resources:

KANSAS

Norton County

North Fork Solomon River Lattice Truss Bridge, Prairie Dog Golf Course, Norton, 03000366

KANSAS

Washington County

Washington County Kingpost Bridge, SW corner of int. K–9 and Center St., Barnes, 89002184

[FR Doc. E8–13434 Filed 6–13–08; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–616]

In the Matter of Certain Hard Disk Drives, Components Thereof, and Products Containing the Same; Notice of Commission Determination Not To Review Initial Determination Granting Complainants' Motion To Terminate the Investigation Based on Withdrawal of the Complaint

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 the initial determination (''ID'') (Order No. 17) of the presiding administrative law judge (''ALJ'') granting complainants' motion to terminate the investigation based on withdrawal of the complaint in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'').

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. 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 (*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: On October 15, 2007, the Commission instituted the above-captioned investigation based upon a complaint filed on September 10, 2007, by Steven F. Reiber and Mary L. Reiber of Lincoln, CA. 72 FR 58335–36 (October 15, 2007). The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hard disk drives, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 6,354,479; 6,651,864; and 6,935,548. The complaint named five respondents: Western Digital Corporation of Lake Forest, CA; Seagate Technology of Scotts Valley, CA; Toshiba American Information Systems, Inc. of Irvine, CA; Hewlett-Packard Company of Palo Alto, CA; and Dell Inc. of Round Rock, TX. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

On April 30, 2008, Complainants filed a motion to terminate the investigation based on withdrawal of the complaint. The Commission Investigative Attorney filed a response in support of Complainants' motion on May 12, 2008. Also on May 12, 2008, Respondents filed a joint response to Complainants' motion in which they opposed termination of the investigation until pending motions regarding summary determination, attorneys fees, and sanctions, filed May 5, 2008, have been ruled upon.

On May 13, 2008, the ALJ issued the subject ID granting Complainants' motion to terminate the investigation based on withdrawal of the complaint, pursuant to Commission Rule 210.21(a)(1). No petitions for review of the ID were filed. The Commission has determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.41(a) and 210.42(h)(3), of the Commission's Rules of Practice and Procedure (19 CFR 210.41(a), 210.42(h)(3)).

By order of the Commission.

Issued: June 11, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–13462 Filed 6–13–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–451 and 731–TA–1126–1127 (Final)]

Certain Lightweight Thermal Paper From China and Germany

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–451 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation Nos. 731–TA–1126–1127 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from China and less-than-fair-value imports from China and Germany of certain lightweight thermal paper, provided for in subheadings 4811.90.80 and 4811.90.90 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''thermal paper with a basis weight of 70 grams per square meter (''g/m^2'') (with a tolerance of ±4.0 g/m^2) or less; irrespective of dimensions; with or without a base coat on one or both sides; with thermal active coating(s) on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat; and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to these investigations is provided for in the Harmonized Tariff Schedule of the United States (''HTSUS'') under subheadings 4811.90.8040, 4811.90.9090, 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00. Although HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.''

E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 13, 2008.

FOR FURTHER INFORMATION CONTACT: Christopher Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of certain lightweight thermal paper, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on September 19, 2007, by Appleton Papers, Inc., Appleton, WI.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 15, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on October 2, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 19, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 23, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is September 22, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 9, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before October 9, 2008. On October 23, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 27, 2008, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 11, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–13463 Filed 6–13–08; 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 May 29, 2008, a proposed Consent Decree in *United States* v. *City of New Orleans, et al.*, Civil Action No. 02–3618, Section ''E'', was lodged with the United States District Court for the Eastern District of Louisiana.

In this action the United States, on behalf of the United States Environmental Protection Agency (''EPA''), sought to recover from certain parties response costs that it incurred in response to releases and threatened releases of hazardous substances from the Agriculture Street Landfill Superfund Site (the ''Site'') located in New Orleans, Louisiana. The United States also sought to recover civil penalties from the City of New Orleans for violations of an access order and information request issued by EPA. The proposed Consent Decree resolves the liability of the City of New Orleans for past response costs and civil penalties, under Sections 104(e) and 107(a) of CERCLA, 42 U.S.C. 9604(e) and 9607(a). Under the terms of the Consent Decree, the City will perform certain in-kind services, provide access, and assist in the placement of institutional controls on the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, NW., Washington, DC 20044–7611, and should refer to *United States* v. *City of New Orleans, et al.*, D.J. Ref. 90–11–3–1638/2.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Louisiana, 500 Poydras Street, Suite 210, New Orleans, Louisiana 70130, and at the offices of EPA, Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. 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 from the Consent Decree Library, please enclose a check in the amount of $12.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–13466 Filed 6–13–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Public Comment Period for Proposed Clean Water Act Consent Decree

Notice is hereby given that, for a period of 30 days, the United States will receive public comments on a proposed Consent Decree in *United States* v. *Valero Refining–Texas,* L.P. (''Valero Consent Decree'') (Civil Action No. 2:08–cv–00190), which was lodged with the United States District Court for the Southern District of Texas on June 10, 2008.

This proposed Consent Decree was lodged simultaneously with the Complaint in this Clean Water Act case against Valero Refining–Texas, L.P. (''Valero''). The Complaint alleges that Valero is civilly liable for violation of the Clean Water Act (''CWA''), 33 U.S.C. 1251 *et seq.*, as amended by the Oil Pollution Act of 1990 (''OPA''), 33 U.S.C. 2701 *et seq.* The Complaint seeks civil penalties for the discharge of oil into navigable waters of the United States or adjoining shorelines from the Valero Refinery West Plant in Corpus Christi, Texas. In particular, the Complaint alleges that at least 3,400 barrels of oil were discharged from a Valero containment berm located on the edge of the Ship Channel on June 1, 2006. Valero already has removed the containment berm and associated aboveground storage tank from the edge of the Ship Channel.

Under the settlement, Valero will pay a civil penalty of $1,650,000. In addition, the settlement requires Valero to implement a Supplemental Environmental Project (''SEP'') estimated at $300,000. The SEP involves the design and construction of an emergency response boat ramp near Public Oil Dock 11 at Avery Point on the Corpus Christi Ship Channel. The new boat ramp is intended to provide an access point for larger emergency response boats to the Ship Channel, which will enhance emergency response efforts to protect human health and the environment on and along the water body that was affected by the spill.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and may be submitted to: P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or via e-mail to *pubcomment-ees.enrd@usdoj.gov,* and should refer to *United States* v. *Valero Refining–Texas, L.P.,* D.J. Ref. 90–5–1–1–09245.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Texas, One Shoreline Plaza, South Tower, 800 N. Shoreline Blvd., Suite 500, Corpus Christi, Texas. During the public comment period the Valero 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 Valero Consent Decree also may 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 from the Consent Decree Library, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. E8–13467 Filed 6–13–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on June 6, 2008, a proposed Consent Decree in *United States et al.* v. *Albemarle Electric Membership Corp., et al.*, Civil Action No. 5:08–cv–00261–D (E.D.N.C.), was lodged with the United States District Court for the Eastern District of North Carolina.

In this action the United States and the State of North Carolina sought cost recovery under Section 107 of CERCLA, 42 U.S.C. 9607, against 27 defendants for costs relating to the release or

threatened release of hazardous substances into the environment at or from the Carolina Transformer Superfund Site in Fayetteville, Cumberland County, North Carolina (''the Site''). The Consent Decree resolves the liability of the 27 named Defendants, 105 additional non-federal settling entities, and eight settling federal agencies. Under the proposed Consent Decree, the 132 non-federal settling parties (collectively termed ''Settling Defendants'') would pay $9,286,461 to the United States Environmental Protection Agency (''EPA'') and $614,109.75 to the State; and the United States, on behalf of the settling federal agencies, would pay $3,095,487 to EPA and $204,703.25 to the State.

In the Decree, the United States would covenant not to sue or take administrative action against the Settling Defendants under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, relating to the Site, subject to certain standard reopeners for new information or unknown conditions. In the Decree, the United States EPA would covenant not to take administrative action against the settling federal agencies under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, relating to the Site, subject to certain standard reopeners for new information or unknown conditions. In the Decree, the State Plaintiff would release and agree not to sue or take administrative action against the Settling Defendants and the settling federal agencies pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607, or state law for past or future costs incurred by the State relating to the Site, subject to specific reservations included in the Decree.

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, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States et al.* v. *Albemarle Electric Membership Corp., et al.*, D.J. Ref. 90–11–3–98/1.

The proposed Consent Decree may be examined at the United States Attorney's Office, 310 New Bern Avenue, Suite 800, Raleigh, NC 27601, and the United States Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, GA 30303. 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 proposed 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 no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.75 (25 cents per page reproduction cost) for a copy exclusive of signature pages and appendices, or $42.25 (25 cents per page reproduction cost) for a copy including signature pages and appendices payable to the ''U.S. Treasury'' or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–13473 Filed 6–13–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request of the ETA 581, Contribution Operations Report; Extension Without Change

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection 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 requirements on respondents can be properly assessed.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 15, 2008.

ADDRESSES: Send comments to Bill Whitt, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg. Room S–4231, Washington, DC 20210, telephone number (202) 693–3219 (this is not a toll-free number) or by e-mail: *whitt.bill@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Workforce Security (OWS) of the Employment and Training Administration (ETA) has responsibility for the Tax Performance System (TPS), which evaluates the employer-related or tax functions of the UI program. The Contribution Operations report (Form ETA 581) is a comprehensive report of each state's UI tax operations and is essential in providing quarterly tax performance data to OWS. ETA 581 data are the basis for measuring the performance and effectiveness of the states' UI tax operations. Using ETA 581 data, the TPS program measures performance, accuracy, and promptness in employer registration (status determinations), report delinquency, collections (accounts receivable), and the audit function.

II. Desired Focus of Comments: Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the ETA 581, Contribution Operations Report. Comments are requested to:

- Evaluate whether the proposed collection of information is necessary to assess performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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.

III. Current Actions: It is important that approval of the ETA 581 report be

extended because this report is the only vehicle for collection of information required under the TPS program. If ETA 581 data were not collected, there would be no basis for determining the adequacy of funding for states' UI tax operations, making projections and forecasts in the budgetary process, nor measuring program performance and effectiveness. The ETA 581 accounts receivable data are necessary in the preparation of complete and accurate financial statements for the Unemployment Trust Fund (UTF) and the maintenance of a modified accrual system for UTF accounting.

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: ETA 581, Report on Contribution Operations.

OMB Number: 1205–0178.

Agency Number: ETA 581.

Recordkeeping: Respondent is expected to maintain data, which support the reported data for three years.

Affected Public: State Government.

Cite/Reference/Form/etc: ETA 581.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 8.5 hours.

Estimated Total Burden Hours: 1,802.

Total Burden Cost (operating/maintaining): $-0-.

Comments submitted in response to this comment request 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: Wednesday, June 4, 2008.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E8–13438 Filed 6–13–08; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,787]

Hasbro, Inc., Hasbro Managerial Services, Inc., East Longmeadow, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 21, 2008, applicable to workers of Hasbro, Inc., East Longmeadow, Massachusetts. The notice was published in the **Federal Register** on March 7, 2008 (73 FR 12466).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of board games and puzzles.

New information shows that workers separated from employment at the subject firm had their wages reported under two separate unemployment insurance (UI) tax accounts Hasbro, Inc. and Hasbro Managerial Services, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Hasbro, Inc., and Hasbro Managerial Services, Inc., who were adversely affected by increased imports of board games and puzzles following a shift in production to China.

The amended notice applicable to TA–W–62,787 is hereby issued as follows:

All workers of Hasbro, Inc., and Hasbro Managerial Services, Inc., East Longmeadow, Massachusetts, who became totally or partially separated from employment on or after January 30, 2007, through February 21, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of June, 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–13403 Filed 6–13–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of May 27 through May 30, 2008.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group

eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,881; Ross and Roberts, Inc., Stratford, CT: February 19, 2007.

TA–W–63,048; Copperfield, LLC, PRO Resources, Avilla, IN: March 11, 2007.

TA–W–63,215; United Stars Industries, Inc., Beloit, WI: April 10, 2007.

TA–W–63,246; I.H.S. Warehousing, Inc., Lease Workers Trillium Staffing Solutions, Midland, MI: April 18, 2007.

TA–W–63,270; Beck Manufacturing, Division of Anvil International, Inc., Santa Fe Springs, CA: April 15, 2007.

TA–W–63,345; Hix Corporation, Flock Department, Pittsburg, KS: May 2, 2007.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,126; Teva Pharmaceuticals, Inc., Northvale, NJ: March 5, 2007.

TA–W–63,305; Dana Holding Corporation, Heavy Vehicle Division, Glasgow, KY: April 24, 2007.

TA–W–63,396; Panasonic Electronic Devices Corporation of America, Automotive Speakers Division, Knoxville, TN: May 15, 2007.

TA–W–63,208; Tyco Electronics, Circuit Protection, Manpower, Staffworks, QPS, Bel, Milwaukee, WI: April 14, 2007.

TA–W–63,225; Chicago Pneumatic Tool Company, LLC, GCA, Charlotte, NC: April 15, 2007.

TA–W–63,407; Syngenta, Inc., Crop Protection Division, Bucks, AL: May 19, 2007.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,255; Feldspar Corp. (The), Imerys Ceramics Div., Spruce Pine, NC: April 25, 2007.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–63,374; Mount Vernon Mills, Trion Denim Mill, Trion, GA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline)

and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met. None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–62,853; Irving Forest Products, Nashville Plantation, ME.
TA–W–62,860; Ullman, A Division of American Greetings Corporation, Burgaw, NC.
TA–W–62,926; SDS Lumber Company, Lumber Division, Bingen, WA.
TA–W–62,968; The Longaberger Company, Global Procurement, Newark, OH.
TA–W–62,968A; The Longaberger Company, Basket Department, Frazeysburg, OH.
TA–W–63,158; Silver City Lumber, Inc., Three Forks, MT.
TA–W–63,190; Bay Valley Foods, LLC, Portland, OR.
TA–W–63,235; Southprint, Inc., Reidsville Division, Reidsville, NC.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–63,197; Dan River, Inc., Danville Operations, Danville, VA.
TA–W–63,226; Semperian, LLC, Div. of GMAC, LLC, Eugene, OR.
TA–W–63,286; Brunswick Bowling and Billiards, Muskegon, MI.
TA–W–63,297; Snider Transportation Services, Tyler, TX.
TA–W–63,422; Springs Global U.S., Inc., Springs Direct Div., Springmaid Wamsutta Factory Store, Lancaster, SC.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

TA–W–63,241; Kataddin Precision Components, LLC, Bangor, ME.

I hereby certify that the aforementioned determinations were issued during the period of May 27 through May 30, 2008. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 9, 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–13401 Filed 6–13–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 26, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 26, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 5th day of June 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 5/27/08 and 5/30/08]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63432	Kongsberg Driveline Systems (Wkrs)	Van Wert, OH	05/27/08	05/08/08
63433	General Motors Metal Fabricating Division (Wkrs)	Parma, OH	05/27/08	05/20/08
63434	Plastech Engineered Products (Comp)	Byesville, OH	05/27/08	05/23/08
63435	Gold Shield (Fleetwood) (Wkrs)	Riverside, CA	05/27/08	05/05/08
63436	Ponderay Newsprint Company (Wkrs)	Usk, WA	05/28/08	05/20/08
63437	Tytex, Inc. (Comp)	Woonsocket, RI	05/28/08	05/17/08
63438	GMAC Insurance (Wkrs)	Maryland Heights, MO	05/28/08	05/23/08
63439	Watson Laboratories, Inc. (State)	Carmel, NY	05/28/08	05/27/08
63440	Magline, Inc. (Wkrs)	Pinconning, MI	05/28/08	05/22/08
63441	Metaldyne Tubular Products (State)	Hamburg, MI	05/28/08	05/27/08
63442	Corinthian, Inc. (Wkrs)	Corinth, MS	05/29/08	05/28/08
63443	DME Company (Wkrs)	Lewiston, PA	05/29/08	05/28/08
63444	Skyline McMinnville Nomad Division (State)	McMinnville, OR	05/29/08	05/28/08
63445	Citation Corporation (Comp)	Grand Rapids, MI	05/29/08	05/28/08
63446	Comau, Inc./Plymouth Facility (Wkrs)	Plymouth, MI	05/30/08	05/29/08
63447	West Fraser, Inc. (State)	Leola, AR	05/30/08	05/29/08
63448	Prestolite Wire LLC (Comp)	Tifton, GA	05/30/08	05/29/08
63449	Lear Corporation (Comp)	Troy, MI	05/30/08	05/29/08
63450	Port of Port Angeles (Wkrs)	Port Angeles, WA	05/30/08	05/27/08
63451	Columbia Falls Aluminum Company LLC (Comp)	Columbia Falls, MT	05/30/08	05/29/08
63452	Katahdin Paper Company LLC (Comp)	Millinocket, ME	05/30/08	05/29/08

APPENDIX—Continued

[TAA petitions instituted between 5/27/08 and 5/30/08]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63453	Dell, Inc.—Topfer Manufacturing Center (State)	Round Rock, TX	05/30/08	05/29/08

[FR Doc. E8–13400 Filed 6–13–08; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,601]

Intel Corporation Fab 23 Colorado Springs, CO; Notice of Negative Determination on Remand

On March 24, 2008, the U.S. Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand to conduct further investigation in *Former Employees of Intel Corporation* v. *U.S. Secretary of Labor,* Court No. 07–00420.

On May 30, 2007, an official of Intel Corporation, Fab 23, Colorado Springs, Colorado (subject firm) filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers and former workers of the subject firm. The subject firm official stated that the subject firm produced ''WiFi products'' for Intel Corporation (Intel) and communication microprocessors for a company that replaced purchases from the subject firm with products manufactured by a Taiwanese company. The official further stated in the petition that ''As a result of the production of these two product lines going overseas, Fab 23 no longer has product to build and will be ceasing production on August 4, 2007.'' AR 2–3.

The institution of the TAA petition was published in the **Federal Register** on June 14, 2007 (72 FR 32915). AR 10–11.

In determining whether a petitioning worker group has met the statutory criteria, the Department refers to the applicable regulation, 29 CFR part 90, for guidance.

During the initial investigation, the subject firm official stated that the subject firm produced ''silicon wafers'' and that the worker separations were due to the subject firm's customer shifting to another company. AR 12. The company official also stated that the subject firm made silicon wafers for wireless fidelity (WiFi) chips and that the wafers were a component of the WiFi cards imported into the United States. The company official further stated that the subject firm shifted silicon wafer production to Taiwan. AR 13. Further, information provided during the initial investigation confirmed that the subject firm produced silicon wafers bearing WiFi chips and communications microprocessors, that the subject workers were not separately identifiable by product line, and that the subject firm would close on August 4, 2007 due to the shift of production to Taiwan during the second and third quarters of 2007 (April–September 2007). AR 14.

The initial investigation further revealed that subject firm's production of silicon wafers increased in 2006 from 2005 levels and increased during January through April 2007 from January through April 2006 levels. AR 16.

The Department's Notice of negative determination, issued on June 15, 2007, regarding the subject workers' eligibility to apply for TAA/ATAA stated that sales and production for silicon wafers increased in 2005, 2006, and year to date 2007, that the subject firm did not import silicon wafers, and that the subject firm did not shift production of silicon wafers to a foreign country during the relevant period. AR 23–25. The determination published in the **Federal Register** on June 28, 2007 (72 FR 35517). AR 26–30.

In a letter dated July 14, 2007, a former worker, David Alexander, requested administrative reconsideration of the Department's negative determination. AR 39. The request for reconsideration alleged:

(1) That when Intel Corporation (Intel) sold the rights to the ''Hermon'' chip to another company, Intel became an agent of that principal company, and, subsequently, the subject workers became employees of the principal company;

(2) That the subject firm did not produce silicon wafers but ''manufactures electronic circuits * * * on a silicon wafer'';

(3) That ''(a) INTEL buys the bare silicon wafer from a supplier, (b) Fab 23 then manufactures the electronic circuit on the wafer called a die and (c) then die is tested and assembly. Item c can be done else where, I believe at this time (July 2007) Marvel chooses elsewhere'';

(4) That the subject workers are secondary/downstream employees to the so-called principal company; and

(5) That the principal company's shift of production to Taiwan is a basis for TAA certification of the subject workers. AR 40–43.

In the request for reconsideration, Mr. Alexander stated that ''packaged dies are called 'chips.' '' AR 41.

During the reconsideration investigation, the Department confirmed that a company, Marvel, purchased from Intel the rights to the Hermon chip, and that, under the agreement, the subject firm would produce silicon wafers bearing the Hermon chip until Marvel's Taiwanese supplier was fully operational. The subject firm ceased production in April 2007 and the last shipment of silicon wafers from the subject firm to Marvel was in the second quarter of 2007. AR 54–55. The Department also confirmed that the articles produced at the subject firm were silicon wafers bearing ''WiFi semiconductor chips.'' AR 57.

The subject firm also provided information about Intel's semiconductor chip production process.

The subject firm purchased bare silicon wafers from various vendors, AR 66, then used a photolithographic printing process to fabricate each chip onto the silicon wafer. AR 57, 65, 66. Each chip is called a die and is tested on the wafer before it was separated from the silicon wafer. AR 65, 74. The process of separating chips from the wafer is called ''dicing'' or ''scribing.'' AR 113.

The silicon wafers bearing WiFi semiconductor chips were sent from the subject firm to other Intel facilities. At these facilities, the wafers were diced and the semiconductor chips were packaged. AR 65–66, 101. The packaging of the chip entails ''mounting the chip on a stamped lead-wire harness in a process called die bonding, then encapsulating this assembly in the final package.'' AR 113.

Without this packaging process, the chip could not electrically communicate outside of itself, could not be placed into a motherboard, and had no customer application. AR 65–66. The dicing of silicon wafers and the

packaging of dies used in WiFi products for Intel occur in Taiwan and the Philippines, with testing of the packaged dies occurring in Malaysia and the Philippines. AR 66, 101. The separation of Marvel's Hermon semiconductor chip from the silicon wafer and the packaging of Hermon chips occurs in Korea, with the testing occurring in the Philippines. AR 66.

During the reconsideration, the Department contacted the subject firm and ascertained that the subject firm did not shift production to a country that is a party to a free trade agreement with the United States or named as a beneficiary under the Andean Trade Preferences Act, the African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act, AR 55, 56, 70, 101. Through contact with the subject firm, the Department also confirmed that the articles imported by Intel are not silicon wafers bearing semiconductor chips, dies, or packaged dies but are WiFi cards. AR 101–102.

The negative determination on reconsideration, issued on September 26, 2007, stated that the subject firm produced silicon wafers and explained that since Taiwan is not a country that is a party to a free trade agreement with the United States or named as a beneficiary under the Andean Trade Preferences Act, the African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act, the subject workers cannot be certified for TAA based on a shift of production to that country absent evidence of increased imports (actual or likely) of like or directly competitive articles following the shift of production to another country. The determination also stated that the subject workers are not secondary workers because the subject firm neither supplied a component part to a buyer nor finished or assembled a final product for a buyer. AR 114–120. The Department's Notice determination was published in the **Federal Register** on October 3, 2007 (72 FR 56387). AR 121–123.

By letter dated November 5, 2007, former workers of the subject firm applied to the USCIT for review. The complaint alleged that ''the Department of Labor decision is flawed by lack of technical knowledge and adherence to previous CIT decisions.''

The USCIT granted the Department's request for voluntary remand, and directed the Department to determine whether, following the subject firm's shift of semiconductor wafer production to a foreign country, there were (actual or likely) increased imports of articles like or directly competitive with semiconductor wafers produced by the subject firm.

Mr. Alexander stated in the request for reconsideration that packaged dies are referred to as chips. AR 41. However, the subject firm refers to semiconductor devices, on the silicon wafer or separated from the wafer, as chips. AR 57, 65, 66.

In order to have consistent terminology during the course of the remand determination, the Department refers to a semiconductor device on the wafer as a chip, a chip separated from the wafer as a die, and a packaged die as an integrated circuit. The terminology is defined in a pamphlet titled ''How to Make an Integrated Circuit.'' AR 113–114.

In their March 26, 2008 letter, Plaintiffs alleged that the Department misidentified the article produced at the subject firm during the relevant period, that semiconductor chips produced at the subject firm were like or directly competitive with imported semiconductor chips, and that it is possible that if ''Intel retained production of the Hermon chips,'' the subject firm would have stayed open. SAR 2–3.

To apply for TAA, the group eligibility requirements under Section 222(a) the Trade Act of 1974, as amended, must be met. The group eligibility requirements can be satisfied in one of two ways:

I. Section 222(a)(2)(A)—

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; *and*

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; *and*

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section 222(a)(2)(B)—

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; *and*

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; *and*

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States; *or*

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; *or*

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Because the subject firm ceased production in April 2007, AR 54–55, the Department determines that section 222(a)(2)(A)(A) and (B) have been met. Further, because the subject firm has shifted semiconductor wafer production to a foreign country, the Department determines that section 222(a)(2)(B)(A) and (B) have been met.

The only issues in the case at hand, therefore, are whether the subject worker group has satisfied section 222(a)(2)(A)(C)—increased imports of like or directly competitive products contributed importantly to subject firm sales and/or production declines and worker separations—or section 222(a)(2)(B)(C)—shift of production to a qualified country and/or increased imports following the shift of production to a foreign country.

Article Produced by the Subject Firm During the Relevant Period

Plaintiffs allege that the subject firm did not produce silicon wafers but produced semiconductor chips in wafer form and that the subject firm may have produced dies and/or packaged dies (integrated circuits) during the relevant period. SAR 2–3.

In support of the allegation that the subject firm did not produce silicon wafers, Plaintiffs submitted a declaration by Mr. Alexander, dated May 1, 2008, SAR 55–57 and a supplemental declaration, dated May 7, 2008, by Mr. Alexander. SAR 61.

In the May 1, 2008 declaration, Mr. Alexander stated that ''I performed a variety of complex operations and routine technical duties in a wafer fabrication environment'' and ''Fab 23 manufactured semiconductor chips on silicon wafers.'' Mr. Alexander also stated that the subject firm produced ''silicon wafers, which * * * contain multiple semiconductor chips'' and that a ''wafer sort'' was conducted to identify defective chips. Mr. Alexander further stated that ''Following the wafer sort

process, INTEL typically would cut semiconductor chips from each silicon wafer; however, these tasks could be undertaken outside of INTEL.'' SAR 55. Exhibit 1 of the declaration identifies the activities that occur at the subject firm as ''Preparing wafer for manufacturing,'' ''Manufacturing of dies/chips on wafer,'' and ''Wafer Sort.'' SAR 57.

In the May 7, 2008 declaration, Mr. Alexander stated that ''My responsibilities included a variety of duties directly related to the preparation, manufacturing and testing of silicon wafers at Fab 23.'' The supplemental declaration did not address the allegation that the subject firm may have produced dies and/or packaged dies (integrated circuits). SAR 61.

The subject firm, in an earlier submission, explained that the bare silicon wafers were purchased from various vendors and that the articles produced at the subject firm were silicon wafers bearing semiconductor chips (these wafers are also referred to in the industry as semiconductor wafers). AR 57, 65, 66. During the remand investigation, the subject firm stated that the articles that left Intel, Fab 23 and were sent to its customer were semiconductor wafers, SAR 31, 32, 64–73, and that semiconductor wafers were sold uncut and unpackaged. SAR 32. A subject firm official sent pictures of the article produced at the subject firm, SAR 65–68, which show that the article is an eight-inch diameter wafer, SAR 66, with multiple chips on it. SAR 64–68.

Based on previously-submitted information and additional information obtained during the remand investigation, the Department determines that, during the relevant period, the subject firm did not produce silicon wafers but produced semiconductor wafers.

Subject Worker Were Not Adversely-Impacted by Increased Imports

The Trade Act of 1974 provides for certification in cases in which production of an article was shifted to a country that is neither a party to a Free Trade Agreement nor a beneficiary of the Andean Trade Preference Act, the African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act only if the increased imports are of articles like or directly competitive with articles produced by the subject firm.

The articles produced by the subject firm were eight-inch diameter semiconductor wafers. SAR 64–68. The articles imported by the subject firm are WiFi cards. AR 101–102.

The applicable regulation, 29 CFR 90.2, defines ''like'' articles as ''those which are substantially identical in inherent or intrinsic characteristics (i.e., materials from which the articles are made, appearance, quality, texture, etc.)''

The semiconductor wafers produced at the subject firm were made with a silicon base and measured eight inches in diameter. AR 57, 65, 66, SAR 64–68. A WiFi card is a portable, electronic device that consists of multiple parts. AR 108–111. Because these two articles are markedly different, they do not meet the definition of ''like articles'' in 29 CFR 90.2, and the Department determines that WiFi cards are not ''like'' semiconductor wafers.

29 CFR 90.2 defines ''directly competitive'' articles as those articles ''which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes (i.e., adapted to the same uses and essentially interchangeable therefore).''

The semiconductor wafers produced at the subject firm cannot be used in any capacity, even though chips on them may be fully functional, because until the chip is cut away from the wafer (becomes a die) and is packaged, the chip cannot communicate outside of itself. AR 65–66.

A WiFi card consists of an integrated circuit and can be inserted into a laptop computer for immediate use. AR 108–111. The integrated circuit is a mere component of the WiFi card, and the Department has consistently determined that components cannot be considered like or directly competitive with the finished product. Because these two articles do not meet the definition of ''directly competitive articles'' in 29 CFR 90.2, the Department determines that semiconductor wafers are not directly competitive with WiFi cards.

Based on the afore-mentioned regulation and information, the Department determines that the alleged imports are not like or directly competitive with the semiconductor wafers that were produced at the subject firm, and, as such, the subject workers cannot be adversely impacted by the increased imports by the subject firm.

During the remand investigation, the Department surveyed the subject firm's only declining customer to determine whether it had increased its imports (relatively or absolutely) of semiconductor wafers (and articles like or directly competitive with semiconductor wafers). SAR 37–40, 51–53. Because there were no such increased imports, SAR 53, the Department determines that the subject workers cannot be adversely impacted by increased imports by the subject firm's declining customer.

Whether Subject Firm Would Have Stayed Open if Intel Retained Production of Hermon Chip Is Irrelevant

Plaintiff further allege that it is possible that if ''Intel retained production of the Hermon chips,'' the subject firm would have stayed open. SAR 2–3.

Because the statute requires the Department to consider events that occurred during the relevant period, the Department does not predict possible results based on events that did not occur. As such, the Department determines that this allegation is irrelevant.

Subject Firm Did Not Shift Production to a Country With Whom the U.S. Has a Free Trade Agreement

The U.S. does not have a free trade agreement with Taiwan. Therefore, a shift of production to Taiwan cannot be a basis for TAA certification for the subject worker group.

Based on the information obtained during the initial investigation, the reconsideration investigation, and the remand investigation, the Department determines that, in the case at hand, neither section 222(a)(2)(A)(C) nor section 222(a)(2)(B)(C) have been met. Therefore, the Department determines that the group eligibility criteria set forth in the Trade Act of 1974, as amended, has not been met.

In addition, in accordance with section 246 of the Trade Act of 1974, as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA.

In order to apply the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for TAA. Since the workers are denied eligibility to apply for TAA, they cannot be certified eligible to apply for ATAA.

Conclusion

After careful review of the findings of the second remand investigation, I affirm the notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Intel Corporation, Fab 23, Colorado Springs, Colorado.

Signed at Washington, DC, this 6th day of June, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–13402 Filed 6–13–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,832]

GAF Materials Corporation, Quakertown, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 5, 2008, International Association of Machinists and Aerospace Workers, District 1 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA), applicable to workers and former workers of the subject firm. The denial notice was signed on March 26, 2008 and published in the **Federal Register** on April 11, 2008 (73 FR 19900).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination was based on the finding that imports of residential roofing materials did not contribute importantly to worker separations at the subject facility and there was no shift of production to a foreign country. The subject firm did not import residential roofing materials during the relevant period. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's declining domestic customers. A survey conducted by the Department of Labor revealed that major customers did not purchase imported residential roofing materials during 2006, 2007 and during the January through February 2008 period.

The petitioner indicates that ''The workers produced asphaltic roofing materials and that the sales and employment at the firm declined during the relevant period.''

Since the worker group was denied on the fact that imports did not contribute importantly to the layoffs at the subject firm and no shift of production to a foreign source occurred, the information provided by the petitioner in the request for reconsideration does not help to satisfy the criteria necessary for certification for TAA.

The request for reconsideration also appears to address workers eligibility for ATAA. The petitioner states that ''a significant number of employees at this location are 50 or older and do not possess skills that are easily transferable.''

In order for the Department to issue a certification of eligibility to apply for ATAA, the worker group must be certified eligible to apply for trade adjustment assistance (TAA). Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

The Union did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 4th day of June, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–13405 Filed 6–13–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,254]

Teva Neuroscience, Inc., Global Clinical Professional Resources Group, Horsham, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 26, 2008, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 9, 2008 and published in the **Federal Register** on May 22, 2008 (73 FR 29783).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of Teva Neuroscience, Inc., Global Clinical Professional Resources Group, Horsham, Pennsylvania, was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner states that Global Clinical Professional Resource Group (GCPRG) ''belonged to the Innovative Research and Development division, which had no involvement in the manufacturing process.'' The petitioner also stated that GCPRG was strictly dealing with the clinical trials and with the clinical data collected from the American population. The petitioner further infers that employment at the subject firm was negatively impacted by the outsourcing of some functions from the subject facility to India.

The initial investigation revealed that the workers of Teva Neuroscience, Inc., Global Clinical Professional Resources Group, Horsham, Pennsylvania, are engaged in operations in support of the conduct of clinical trials of pharmaceutical products manufactured abroad, including database management, clinical quality control, and administration. These functions, as

described above, are not considered production of an article within the meaning of Section 222 of the Trade Act of 1974.

The allegation of a shift to another country might be relevant if it was determined that workers of the subject firm produced an article. Since the investigation determined that workers of the subject firm do not produce an article, there can not be imports nor a shift in production of an ''article'' abroad within the meaning of the Trade Act of 1974 in this instance.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 9th day of June 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–13406 Filed 6–13–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,809]

Edwards Vacuum, Inc., Wilmington, MA; Notice of Revised Determination on Reconsideration

By application dated April 23, 2008, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on March 31, 2008 and published in the **Federal Register** on April 17, 2008 (73 FR 20954).

In the request for reconsideration, the company official provided new information regarding production at the subject facility. The company official stated that workers of the subject facility produce remanufactured vacuum pumps for retail.

Based on the information provided by the company official, the Department determined that workers of the subject firm were engaged in the production of remanufactured vacuum pumps. The investigation also revealed that the subject firm has begun shifting production of remanufactured vacuum pumps to Mexico and that this shift contributed to the layoffs at the subject firm.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act, as amended, must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the investigation, I determine that there was a shift in production from the workers' firm or subdivision to Mexico of articles that are like or directly competitive with those produced by the subject firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of Edwards Vacuum, Inc., Wilmington, Massachusetts who became totally or partially separated from employment on or after February 4, 2007 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 5th day of June, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–13404 Filed 6–13–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,349]

Capelsie, Inc., Troy, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 9, 2008 in response to a worker petition filed by a company official on behalf of workers of Capelsie, Incorporated, Troy, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 3rd day of June 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–13408 Filed 6–13–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,339]

Contact Systems, Inc. Danbury, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 8, 2008 in response to a worker petition filed a company official on behalf of workers at Contact Systems, Inc., Danbury, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 4th day of June, 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–13407 Filed 6–13–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,450]

Port of Port Angeles, Port Angeles, WA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 30,

2008 in response to a petition filed on behalf of workers of Port of Port Angeles, Port Angeles, Washington.

The petition regarding the investigation has been deemed invalid. The petition was signed by two dislocated workers. A petition filed by workers requires three signatures. Consequently, the investigation has been terminated.

Signed at Washington, DC this 3rd day of June 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–13399 Filed 6–13–08; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

Application To Amend a License To Export Major Components for Nuclear Reactors

Pursuant to 10 CFR 110.70(b)(1) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an amendment to an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 Fed. Reg 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. To ensure timely electronic filing, at least five days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

In its review of applications for licenses and license amendments involving exports of major components of a utilization facility as defined in 10 CFR Part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or facilities to be exported.

The information concerning the application follows:

NRC APPLICATION TO AMEND A LICENSE TO EXPORT MAJOR COMPONENTS FOR NUCLEAR REACTORS

Name of applicant, date of application, date received, application No., Docket No.	Total quantity/description of major components	End use	Country of destination
Curtiss-Wright Electro-Mechanical Corporation, April 16, 2008, May 5, 2008, XR170/01, 11005552.	Seventeen (17) complete primary reactor coolant pumps (RCPs), including motors, related equipment and spare parts as specified in 10 CFR Part 110, Appendix A Items (4) and (9). Approximate Dollar Value: Proprietary.	For construction, maintenance and operation of pressurized water reactors (PWRs) of 1,000 MWe class. Amend to add: 1) twelve (12) complete primary RCPs including motors, equipment, and spare parts; 2) new intermediate consignees to act as purchasing agents and/or to manufacture finished parts, components, sub-assemblies and assemblies for use in primary RCPs; and 3) new ultimate nuclear power plant consignees.	People's Republic of China.

For the U.S. Nuclear Regulatory Commission.

Dated this 6th day of June 2008 at Rockville, Maryland.

Scott W. Moore,

Deputy Director, Office of International Programs.

[FR Doc. E8–13477 Filed 6–13–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Environmental Assessment and Final Finding of No Significant Impact for the Issuance of Grants to Eligible Institutions of Higher Education in the United States

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for the issuance of grants to institutions of higher education in the United States, for scholarships, fellowships, faculty and curricula development in nuclear safety, nuclear security, nuclear environmental protection, and other fields that the Commission determines to be critical to the NRC's regulatory mission.

FOR FURTHER INFORMATION CONTACT: James Morris, Deputy Associate Director, Professional Development Center, Office of Human Resources, Mail Stop W5–A6, Washington, DC 20555; Telephone number: 301–492–2303; FAX number: 301–492–2243; or by e-mail: *james.morris@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 243 of the Atomic Energy Act of 1954, as amended (AEA), authorizes the U.S. Nuclear Regulatory Commission (NRC or Commission) to create a scholarship and fellowship program to fund scholarships, fellowships, and stipends for the study of science, engineering, or another field of study that the NRC determines is a critical skill area related to its regulatory mission, to support faculty and curricular development in such fields, and to support other domestic educational, technical assistance, or training programs (including those of trade schools) in such fields.

Section 31.b.(2) of the AEA authorizes the U.S. Nuclear Regulatory Commission (NRC or Commission) to provide grants, loans, cooperative agreements, contracts, and equipment to institutions of higher education to support courses, studies, training, curricula, and disciplines pertaining to nuclear safety, security, or environmental protection, or any other field that the Commission determines to be critical to the regulatory mission of the Commission.

The NRC is proposing to award grants, using funds available in fiscal year 2008, to eligible institutions of higher education in the United States as authorized by sections 31.b.(2) and 243 of the AEA. The NRC has prepared an environmental assessment (EA) as its evaluation of this proposed action in accordance with the requirements in 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact is appropriate to the proposed action.

II. Environmental Assessment

Identification of Proposed Action

The NRC is proposing to fund five competitive grant programs. The goal of the five grant programs is to promote and strengthen teaching programs in nuclear safety, nuclear security, nuclear environmental protection, and other fields that the Commission determines to be critical to the NRC's regulatory mission, by through the award of grants for scholarships and fellowships and to enhance curricula and increase faculty teaching competencies. Under the first program, the U.S. Nuclear Regulatory Commission Nuclear Education Grant Program, Fiscal Year 2008 (funding number HR–FN1207–EDU2), the NRC would make grant awards up to $4.7 million dollars in fiscal year 2008, to higher education institutions, accredited in the United States.

The primary purpose of the U.S. Nuclear Regulatory Commission Nuclear Education Grant Program is to support the educational infrastructure necessary for the nation to safely move forward with its nuclear energy initiatives. The goal of the program is to promote and strengthen teaching programs in nuclear safety, nuclear security, nuclear environmental protection, and other fields that the Commission determines to be critical to the NRC's regulatory mission at higher education institutions, by enhancing curricula and increasing faculty teaching competencies. Projects awarded grants under the proposed program may develop, revise, implement, or improve teaching competencies, subject matter expertise, and skills in serving students in significant nuclear programs. Applicants would be expected to identify innovative instructional approaches or techniques to enhance student learning, including distance educational and experiential learning. Curriculum development projects may create teaching resources such as course material, including teaching guides on specific nuclear topics. Such materials may use print or electronic formats, but the preparation of traditional textbooks would be ineligible for funding. Under the proposed grant program, projects must have an academic focus within the areas of nuclear safety, nuclear security, nuclear environmental protection, or the other fields the Commission has determined to be critical to the NRC's regulatory mission.

Under the remaining four grant programs, the U.S. Nuclear Regulatory Commission Nuclear Scholarship/ Fellowship Program Announcement of Opportunity, Fiscal Year 2008 (not yet announced); the U.S. Nuclear Regulatory Commission Nuclear Education Program Scholarship and Fellowship Announcement of Opportunity, Fiscal Year 2008 (funding number HR–FN208–NEDO1); the U.S. Nuclear Regulatory Commission Nuclear Education Program Faculty Development Grants Announcement of Opportunity, Fiscal Year 2008 (funding number HR–FN208–NEDO2); and the U.S. Nuclear Regulatory Commission Nuclear Education Program Trade School Scholarship Announcement of Opportunity, Fiscal Year 2008 (funding number HR–FN208–NEDO3); the NRC would make grant awards up to $15.4 million dollars in fiscal year 2008 for undergraduate scholarships, graduate fellowships, trade school scholarships, and faculty development grants to support education in nuclear science and engineering, for the purpose of developing a workforce capable of supporting the design, construction, operation, and regulation of nuclear facilities and the safe handling of nuclear materials. Participation in the awards program would require recipients to serve in nuclear-related employment for each full or partial year of academic support. The employment may be with NRC, other Federal agencies, State agencies, Department of Energy laboratories, nuclear-related industry, or academia in the recipients' sponsored fields of study.

A more detailed description of the fiscal year 2008 NRC grant programs is available at *http://www.grants.gov* (find grant opportunities/browse by agency/ U.S. Nuclear Regulatory Commission).

The Need for the Proposed Action

The proposed action implements the congressional intent of sections 31.b.(2) and 243 of the AEA, namely, to foster the study of science, engineering, or another field of study that the NRC determines is in a critical skill area related to its regulatory mission.

Environmental Impacts of the Proposed Action

The proposed action is specifically geared toward the development of teaching and educational programs in the nuclear field. As the proposed action is administrative in nature, it will have no significant effect on the quality of the human environment. The proposed action is not expected to result in: increased radiation doses to nuclear industry workers or members of the public; degradation of water quality or of the water supply; endangered or threatened species habitat destruction; increased effluents or changes in effluent pathways; increased noise; damage or reduced access to cultural resources; changes to local or regional socioeconomic conditions; increased traffic or other transportation effects; or increased competition for available resources. Moreover, the NRC will not issue awards to fund programs that include or involve activities directly affecting the environment, such as the construction of facilities; a major disturbance of the local environment brought about by blasting, drilling, excavating or other means; large-scale acquisitions of computer equipment; field work affecting the local environment (except field work which only involves noninvasive or non-harmful techniques such as taking water or soil samples or collecting non-protected species of flora and fauna); and the testing and release of radioactive material.

Accordingly, the NRC finds that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the administrative nature of the proposed action, its environmental impacts are small or nonexistent. Therefore, the only alternative NRC considered is the ''no-action'' alternative, namely, not issuing any grant awards. The no-action alternative runs counter to the congressional intent expressed in section 31.b.(2) of the AEA, which authorizes the NRC to provide grants to support courses, studies, training, curricula, and disciplines pertaining to nuclear safety, security, or environmental protection, and in section 243 of the AEA, which authorizes the NRC to issue scholarships and fellowships to higher education institutions for the purpose of enabling students to pursue education in science, engineering, or another field of study that the NRC determines is in a critical skill area related to its regulatory mission.

The ''no-action'' alternative would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Agencies and Persons Consulted

The NRC has determined that the proposed action is administrative in nature and will not affect listed species or critical habitat. Therefore, no consultation is required under Section 7 of the Endangered Species Act. The NRC has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

III. Final Finding of No Significant Impact

On the basis of this environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

For further information regarding the NRC Education Grants program, please visit the NRC Web site at *http://www.nrc.gov/about-nrc/grants.html*. The public may access this document by using ADAMS on the NRC public Web site by using the following accession number ML081570477.

Dated at Rockville, Maryland, this 6th day of June, 2008.

For the Nuclear Regulatory Commission.

James F. McDermott,

Director, Office of Human Resources.

[FR Doc. E8–13461 Filed 6–13–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–09067]

Notice of License Application Request of Uranerz Energy Corporation Nichols Ranch In Situ Uranium Recovery Project, Casper, Wyoming, Opportunity To Request a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license application, and opportunity to request a hearing.

DATES: A request for a hearing must be filed by August 15, 2008.

FOR FURTHER INFORMATION CONTACT: Ron C. Linton, Project Manager, Uranium Recovery Licensing Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC, 20555. Telephone: (301) 415–7777; fax number: (301) 415–5369; e-mail: *ron.linton@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated November 30, 2007, Uranerz Energy Corporation (Uranerz) submitted a Source Materials License Application to the Nuclear Regulatory Commission (NRC) for the Nichols Ranch Uranium Project in Campbell and Johnson Counties, Wyoming. The Nichols Ranch Uranium Project would involve the recovery of uranium by in situ leach (ISL) extraction techniques. An NRC administrative review, documented in a letter to Uranerz dated April 14, 2008, found the application acceptable to begin a technical and environmental review. Before approving the license application, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations.

These findings will be documented in a Safety Evaluation Report (SER) and a site-specific environmental review consistent with the provisions of 10 CFR Part 51.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a source materials license regarding Uranerz's proposal to construct and operate the Nichols Ranch Uranium Project ISL uranium extraction facility in Campbell and Johnson Counties, Wyoming. Any person whose interest may be affected by this proceeding, and who desires to participate as a party, must file a request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). The E-Filing rule requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requester must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requester (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requester will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requester has obtained a digital ID certificate, has a docket created, and downloaded the EIE viewer, the petitioner/requester can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the

NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include social security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by August 15, 2008.

In addition to meeting other applicable requirements of 10 CFR 2.309, a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial, or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and technical report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting technical (i.e., safety analysis) report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Technical Report for the proposed action.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten (10) days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the November 30, 2007 license application and its supporting documentation (i.e., Technical Report and Environmental Report), are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the documents related to this Notice is ML080080594, Uranerz Energy Corporation, Submittal of Source Material License Application to Construct and Operate the Nichols Ranch ISR Project Located in Campbell and Johnson Counties, Wyoming. The ADAMS accession number for the NRC staff's administrative review letter, dated April 14, 2008, is ML080730090. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information. A suggested schedule is provided as Attachment 1 to this order.

2. Within ten (10) days after publication of this notice of opportunity for hearing any potential party as defined in 10 CFR 2.4 who believes access to SUNSI is necessary for a response to the notice may request access to such information. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail addresses for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail addresses for the Office of the Secretary and the Office of the General Counsel are *HearingDocket@nrc.gov* and *OGCmail@nrc.gov,* respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed, if the licensing action is taken;

c. The identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

4. Based on an evaluation of the information submitted under items 2 and 3.a through 3.c, above, the NRC staff will determine within ten (10) days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI.

5. A request for access to SUNSI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[2] Any protective order issued shall provide that the petitioner must file SUNSI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

6. If the request for access to SUNSI is granted, the terms and conditions for access to such information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[3] and the petitioner(s). If the

[1] See footnote 4. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

[3] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be

diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within five (5) days, describing the obstacles to the agreement.

7. If the request for access to SUNSI is denied by the NRC staff after a determination on standing, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing, by filing a challenge within five (5) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to § 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within five (5) days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[4]

8. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2.

Dated at Rockville, Maryland, this 10th day of June 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1.—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) IN

Day	Event
0	Publication of [**Federal Register** notice/other notice of proposed action and opportunity for hearing], including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted.
[20, 30 or 60]	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information. If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents.)
25	If NRC staff finds no ''need,'' ''need to know,'' or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit. Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A+3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A+28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

harmed by the release of the information (e.g., as with proprietary information).

[4] As of October 15, 2007, the NRC's final ''E-Filing Rule'' became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI requests submitted to the NRC staff under these procedures.

ATTACHMENT 1.—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) IN—Continued

Day	Event
A+53 (Contention receipt +25).	Answers to contentions whose development depends upon access to SUNSI.
A+60 (Answer receipt +7)	Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[FR Doc. E8–13471 Filed 6–13–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

OMB Circular A–133 Information Collection under OMB Review

AGENCY: Office of Management and Budget.

ACTION: Notice of Submission for OMB Review, Comment Request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 et seq.), this notice announces that an information collection request was submitted to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) for processing under 5 CFR 1320.10. The first notice of this information collection request, as required by the Paperwork Reduction Act, was published in the **Federal Register** on December 5, 2007 [72 FR 68608]. The information collection request involves two proposed information collections from two types of entities: (1) Reports from auditors to auditees concerning audit results, audit findings, and questioned costs; and (2) reports from auditees to the Federal Government providing information about the auditees, the awards they administer, and the audit results. These collection efforts are required by the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 et seq.) and OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'' Circular A–133's information collection requirements apply to approximately 36,000 States, local governments, and non-profit organizations on an annual basis.

DATES: Submit comments on or before July 16, 2008. Late comments will be considered to the extent practicable.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted via the Internet to *ahunt@omb.eop.gov*. Please include ''Form SF–SAC Comments'' in the subject line and the full body of your comments in the text of the electronic message and not as an attachment. Please include your name, title, organization, postal address, telephone number and E-mail address in the text of the message. You may also submit comments via Facsimile to (202–395–7285).

Comments may be mailed to Alexander Hunt, Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Room 10236, Washington, DC 20503.

Comments may also be sent to via *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''Form SF–SAC Comments'' (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

FOR FURTHER INFORMATION CONTACT: For further information, contact Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, 202–395–3052 and via e-mail: *Hai_M._Tran@omb.eop.gov*. The data collection form, SF–SAC, and its instructions can be obtained by contacting the Office of Federal Financial Management, as indicated above or by download from the OMB Grants Management home page on the Internet at *http://www.whitehouse.gov/omb/grants/grants_forms.html*.

SUPPLEMENTARY INFORMATION:

A. Background

OMB Control No.: 0348–0057.

Title: Data Collection Form.

Form No: SF–SAC.

Type of Review: Reinstatement with change.

Respondents: States, local governments, non-profit organizations (Non-Federal entities) and their auditors.

Estimated Number of Respondents: 72,000 (36, 000 from auditors and 36,000 from auditees). The respondents' information is collected by the Federal Audit Clearinghouse (Maintained by the U.S. Bureau of Census).

Estimated Time per Respondent: 59 hours for each of 400 large respondents and 17 hours for each of 71,600 small respondents for estimated annual burden hours of 1,240,800.

Estimated Number of Responses per Respondent: 1.

Frequency of Response: Annually.

Needs and Uses: Reports from auditors to auditees and reports from auditees to the Federal government are used by non-Federal entities, pass-through entities, and Federal agencies to ensure that Federal awards are expended in accordance with applicable laws and regulations. The Federal Audit Clearinghouse (FAC) (maintained by the U.S. Census Bureau) uses the information on the SF–SAC to ensure proper distribution of audit reports to Federal agencies and to identify non-Federal entities who have not filed the required reports. The FAC also uses the information on the SF–SAC to create a government-wide database which contains information on audit results. This database is publicly accessible on the Internet at *http://harvester.census.gov/fac/*. It is used by Federal agencies, pass-through entities, non-Federal entities, auditors, the General Accounting Office, OMB, and the general public for management and information about Federal awards and the results of audits.

B. Public Comments and Responses

Pursuant to the December 5, 2007, **Federal Register** notice, OMB received 44 comments from 7 commenters relating to the proposed revision to the information collection. Letters came from State governments (including State auditors), the American Institute of Certified Public Accountants, certified public accountants (CPAs), and Federal agencies. The comments received relating to the information collection and OMB's responses are summarized below.

General

Comments: All commenters, except one, supported the proposed revisions to both the Form and related instructions. The one commenter suggested a delayed implementation for electronic filing (see response in the ''Electronic Filing'' section). Some requested clarifications on the Form's instructions.

Terminology Changes

Comments: All commenters supported the terminology from ''Reportable Conditions'' to reflect ''Significant Deficiencies'' and the definition change for ''Material Weaknesses'' in line with changes in A–133 due to AICPA's Statement on Auditing Standard (SAS) No. 112, ''Communicating Internal Control Related Matters Identified in an Audit.''

Electronic Filing

Comments: All commenters, except one, supported the proposal to require all-electronic filing. The one commenter felt it is too early to put the requirement in place due to inadequate Internet access and computer savvy among many local government and non-profit auditees.

Response: OMB feels the requirement will prompt most auditees and auditors to make the minor technological improvements needed to comply. Currently, 87% of the SF–SAC Forms are filled out on-line. Only 2% of those contained errors relating to signatures and dates. The proposed electronic submission will eliminate signature errors. Of the remaining 13% of the forms that were filled out manually, 25% of those contained errors that would not otherwise occur with Forms created on-line. The proposed electronic submission will eliminate form and signature errors. On-line submissions will include a mandatory checklist for all required audit components. This is expected to make a marked reduction in the nearly 11,000 submissions received each year missing audit components or data collection forms.

Comments: One commenter requested more clarification regarding the electronic submission process.

Response: Agreed. More details are added in the Form's instructions. OMB and the FAC are pursuing the best practices for implementing the technological changes and will implement improvements as needed. The FAC will use the mandatory e-mail address from the auditee and the auditor responsible for signing and certifying the Form SF–SAC as part of a form certification process. These e-mails will not be posted on the Web site unless they are also entered in the Part I, Item 6(f) and 7(f) of the form. When an auditee or auditor is ready to sign their on-line Form SF–SAC, they will initiate the certification process. Once the certification process has been initiated, the FAC Internet Data Entry System (IDES) will send an email to the auditee's and auditor's certifying officials. Each certifying official will be given a unique number in the e-mail to serve as a signature code. Instead of signing the form SF–SAC, the certifying officials will enter their unique signature code instead of a signature.

Size of PDF Files and Links to Audits

Comments: In order to minimize the size of the attachments, one commenter offered an alternative proposal to allow for the submission of Web site location(s) of the required audit reports to the Federal Audit Clearinghouse. The Federal Audit Clearinghouse processors would click the link and save the required files to their network.

Response: The FAC estimates an average file size of 1.65 MB for an OMB Circular A–133 reporting package. Based on this average file size, the FAC does not believe a large amount of time will be needed to upload a reporting package to the FAC Internet Data Entry System. The size of PDF files is not an issue due to the significant advances in electronic file storage capacity and costs.

The on-line electronic submission process requires the auditee to submit the reporting package in a consistent format over a secure server. Currently, the audits available on Web sites do not offer the required electronic file consistency or security needed for processing thousands of submissions. Most audits on Web sites do not include all of the required audit components in a single document as required.

Form SF–SAC and Instructions

Comments: Several commenters offered suggestions to improve formatting and wording of the Form SF–SC and Instructions.

Response: Agreed. Most formatting suggestions were accepted and the problems were fixed. A few other suggestions were not needed, or were not feasible.

Comments: One commenter recommended adding instructions to the Data Collection Form (DCF) that outline the procedures for unlocking, revising and re-submitting a revised DCF.

Response: Agreed. The FAC enhanced the written instructions to include instructions for on-line submissions and revisions. Detailed instructions will be available on the Web site.

Comments: One commenter noted confusion regarding the previously proposed Form SF–SAC Instructions regarding including the HUD project number with the auditee name.

Response: The HUD number is not a requirement, but may be included to supplement the project name in the Auditee name field. The Form SF–SAC instructions were revised to make this distinction clearer.

Comments: There are instances where multiple auditors are engaged to conduct an audit, OMB should add continuation sheet similar to the Part I, Item 5 sheet to provide the ability to capture additional auditor information.

Response: Agreed. OMB changed the proposed 2008 Form SF–SAC to allow for the inclusion of additional auditors contact information. One primary auditor is still required. The additional auditors will be considered secondary auditors for the purposes of the Single Audit.

Comments: One commenter expressed concern about how indirect awards are required to be reported in the *Federal Awards Expended During Fiscal Year* table. The commenter recommends that OMB clarify whether the reporting for indirect awards must be at the same level of detail as the Scheduled of Expenditures of Federal Awards (SEFA). If so, the OMB should consider how and whether this information is being used in practice and whether it should continue to be required in such detail.

Response: No change. In order to manage the Federal programs, Federal Agencies continue to need the list of CFDAs on the Form SF–SAC in the same detail as shown on the SEFAS. The Federal agencies need to see the sources of separate programs even if they have the same CFDA number.

Comments: In regards to Part III, Item 9 column (d)—Name of Federal Program, one commenter suggested clarification if column 9d of Part III needs to include pass through entity name and pass-through award number, particularly for the R&D Cluster. That information is required on the Schedule of Expenditures of Federal Awards and can be looked up by any federal agency for which there is a finding listed for a pass-through award. Practice varies and enforcement by agencies is inconsistent.

Response: Agreed. The Form instructions are revised to read that the pass-through entity name is not required.

Comments: In regards to Part III, Item 9 column (e), one commenter suggested clarifying the instructions in relation to loan programs not receiving any new

federal dollars, particularly Perkins, but are continuing to lend money from funds generated from repayments. The current instructions are not clear on how to report under these circumstances.

Response: Agreed. The Form SF–SAC Instructions are revised to refer the question of Federal loans or loan guarantees as expenditures to the OMB Circular A–133 Compliance Supplement or the Federal oversight (or cognizant) agency for determination.

Comments: One commenter suggested improving the Form SF–SAC Instructions by referencing the June 26, 2007, **Federal Register** notice that changed the number of copies of the reporting package to submit to the FAC (from several to one).

Response: Electronic submissions make the number of copies of the reporting package unnecessary (i.e., submission of hard copy of the reporting package is no longer needed). The reference was removed from instructions.

Comments: One commenter suggest considering if the addition of the additional data elements such as ''Total Revenue'' would be useful.

Response: This data element is a major change/addition to the proposed form. Adding new Form elements such as ''Total Revenue'' as well as others will be considered further for possible inclusion into future versions of the Form SF–SAC.

Danny Werfel,

Deputy Controller.

[FR Doc. E8–13385 Filed 6–13–08; 8:45 am]

BILLING CODE 3110–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension of a currently approved collection of information: 3220–0154, Employee Non-Covered Service Pension Questionnaire. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Section 215(a)(7) of the Social Security Act provides for a reduction in social security benefits based on employment not covered under the Social Security Act or the Railroad Retirement Act (RRA). This provision applies a different social security benefit formula to most workers who are first eligible after 1985 to both a pension based in whole or in part on non-covered employment and a social security retirement or disability benefit. There is a guarantee provision that limits the reduction in the social security benefit to one-half of the portion of the pension based on non-covered employment after 1956. Section 8011 of Public Law 100–647 changed the effective date of the onset from the first month of eligibility to the first month of concurrent entitlement to the non-covered service benefit and the RRA benefit.

Section 3(a)(1) of the RRA provides that the Tier I benefit of an employee annuity will be equal to the amount (before any reduction for age or deduction for work) the employee would receive if he or she would have been entitled to a like benefit under the Social Security Act. The reduction for a non-covered service pension also applies to a Tier I portion of employees under the RRA where the annuity or non-covered service pension begins after 1985. Since the amount of a spouse's Tier I benefit is one-half of the employee's Tier I, the spouse annuity is also affected by the employee's non-covered service pension reduction of his or her Tier I benefit.

The RRB utilizes Form G–209, Employee Non-Covered Service Pension Questionnaire, to obtain needed information from railroad retirement employee applicants or annuitants about the receipt of a pension based on employment not covered under the Railroad Retirement Act or the Social Security Act. It is used as both a supplement to the employee annuity application, and as an independent questionnaire to be completed when an individual who is already receiving an employee annuity, becomes entitled to a pension. One response is requested of each respondent. Completion is required to obtain or retain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 12475 on March 7, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employee Non-Covered Service Pension Questionnaire.

OMB Control Number: OMB 3220–0154.

Form(s) submitted: G–209.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Section 3 of the Railroad Retirement Act, the Tier I portion of an employee annuity may be subjected to a reduction for benefits received based on work not covered under the Social Security Act or Railroad Retirement Act. The questionnaire obtains the information needed to determine if the reduction applies and the amount of such reduction.

Changes Proposed: The RRB proposes minor, non-burden impacting, clarification and editorial changes to G–209.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form(s): Completion time for Form G–209 is estimated at 1 minute for a partial questionnaire and 8 minutes for a full questionnaire.

Estimated annual number of respondents: 150.

Total annual responses: 150.

Total annual reporting hours: 14.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E8–13395 Filed 6–13–08; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension of a currently approved collection of information: 3220–0086, Application for Reimbursement for Hospital Insurance Services in Canada. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Under section 7(d) of the Railroad Retirement Act (RRA), the RRB administers the Medicare program for persons covered by the railroad retirement system. Payments are provided under section 7(d)(4) of the RRA for medical services furnished in Canada to the same extent as for those furnished in the United States. However, payments for the services furnished in Canada are made from the Railroad Retirement Account rather than from the Federal Hospital Insurance Trust Fund, with the payments limited to the amount by which insurance benefits under Medicare exceed the amounts payable under Canadian Provincial plans.

Form AA–104, Application for Canadian Hospital Benefits Under Medicare—Part A, is provided by the RRB for use in claiming benefits for covered hospital services received in Canada. The form obtains information needed to determine eligibility for, and the amount of any reimbursement due the applicant. One response is requested of each respondent. Completion is required to obtain a benefit.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 10075 on February 25, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application for Reimbursement for Hospital Insurance Services in Canada.

OMB Control Number: OMB 3220–0086.

Form(s) submitted: AA–104.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: The Railroad Retirement Board administers the Medicare program for persons covered by the Railroad Retirement system. The collection obtains the information needed to determine eligibility and for the amount due for covered hospital services received in Canada.

Changes Proposed: The RRB proposes non-burden impacting formatting and editorial changes to Form AA–104.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form(s): Completion time for Form AA–104 is estimated at 10 minutes.

Estimated annual number of respondents: 35.

Total annual responses: 35.

Total annual reporting hours: 6.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E8–13398 Filed 6–13–08; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension of a currently approved collection of information: 3220–0164, Availability for Work. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Under Section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day for which the claimant is not available for work.

Under Railroad Retirement Board (RRB) regulation 20 CFR 327.5, ''available for work'' is defined as being willing and ready for work. This section further provides that a person is ''willing'' to work if that person is willing to accept and perform for hire such work as is reasonably appropriate to his or her employment circumstances. The section also provides that a claimant is ''ready'' for work if he or she; (1) is in a position to receive notice of work and is willing to accept and perform such work, and (2) is prepared to be present with the customary equipment at the location of such work within the time usually allotted.

Under RRB regulation 20 CFR 327.15, a claimant may be requested at any time to show, as evidence of willingness to work, that he or she is making reasonable efforts to obtain work. In order to determine whether a claimant is; (a) available for work, and (b) willing to work, the RRB utilizes Forms UI–38 and UI–38s to obtain information from the claimant and Form ID–8k from his union representative. One response is completed by each respondent. The RRB proposes minor non-burden impacting editorial changes to Form(s) UI–38, UI–38s and ID–8k.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 10074 and 10075

on February 25, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Availability for Work.

OMB Control Number: OMB 3220–0164.

Form(s) submitted: UI–38, UI–38s, ID–8k.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households, Non-profit institutions.

Abstract: Under Section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day in which the claimant is not available for work. The collection obtains information needed by the RRB to determine whether a claimant is willing and ready to work.

Changes Proposed: The RRB proposes minor, non-burden impacting, editorial changes to Form(s) UI–38, UI–38s, and ID–8k.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form(s): Form UI–38 is estimated at 11.5 minutes per response; Form UI–38s is estimated at 6 minutes per response in-person and 10 minutes per response by mail and Form ID–8k is estimated at 5 minutes per response.

Estimated annual number of respondents: 7,600.

Total annual responses: 7,600.

Total annual reporting hours: 1,085.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E8–13431 Filed 6–13–08; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 609 and Form SIP; OMB Control No. 3235–0043; SEC File No. 270–23.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the existing collection of information provided for the following rule: Rule 609 (17 CFR 249.609) (formerly Rule 11Ab2–1) and Form SIP (17 CFR 249.1001).

On September 23, 1975, the Commission adopted Rule 11Ab2–1,[1] which under Regulation NMS has been redesignated as Rule 609 and Form SIP under the Securities Exchange Act of 1934 (''Act'') (15 U.S.C. 78a *et seq.*) to establish the procedures by which Securities Information Processor (''SIP'') files and amends their SIP registration statements.[2] The information filed with the Commission pursuant to Rule 609 and Form SIP is designed to provide the Commission with the information necessary to make the required findings under the Act before granting the SIP's application for registration. In addition, the requirement that a SIP file an amendment to correct any inaccurate information is designed to assure that the Commission has current, accurate information with respect to the SIP. This information is also made available to members of the public.

Only exclusive SIPs are required to register with the Commission. An exclusive SIP is a SIP that engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication, any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic quotation system operated by such association. The federal securities laws require that before the Commission may approve the registration of an exclusive SIP, it must make certain mandatory findings. It takes a SIP applicant approximately 400 hours to prepare documents which include sufficient information to enable the Commission to make those findings. Currently, there are only two exclusive SIPs registered with the Commission; The Securities Information Automation Corporation (''SIAC'') and The Nasdaq Stock Market, Inc. (''Nasdaq''). SIAC and Nasdaq are required to keep the information on file with the Commission current, which entails filing a form SIP annually to update information. Accordingly, the annual reporting and recordkeeping burden for Rule 609 and Form SIP is 400 hours. This annual reporting and recordkeeping burden does not include the burden hours or cost of amending a Form SIP because the Commission has already overstated the compliance burdens by assuming that the Commission will receive one initial registration pursuant to Rule 609 on Form SIP a year.

Rule 609 and Form SIP do not impose a retention period for any recordkeeping requirements. Completing and filing Form SIP is mandatory before an entity may become an exclusive SIP. Except in cases where confidential treatment is requested by an applicant and granted by the Commission pursuant to the Freedom of Information Act and the rules of the Commission thereunder, information provided in the Form SIP will be routinely available for public inspection. Please note that 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 control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: June 9, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–13427 Filed 6–13–08; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* Securities Exchange Act Release No. 11673 (September 23, 1975), 40 FR 45422 (October 2, 1975).

[2] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Harbour Intermodal, Ltd.; Order of Suspension of Trading

June 12, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Harbour Intermodal, Ltd. because it has not filed any periodic reports since the period ended September 30, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT on June 12, 2008, through 11:59 p.m. EDT on June 25, 2008.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 08–1361 Filed 6–12–08; 12:18pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57935; File No. SR–FINRA–2008–023]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Violations Appropriate for Disposition Under FINRA's Minor Rule Violation Plan

June 6, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 27, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA proposes to amend NASD Interpretive Material (''IM'') 9216 [3] to expand FINRA's Minor Rule Violation Plan (''MRVP'') to include violations of options position and exercise limits and contrary exercise advice procedures. The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and *http://www.finra.org*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend NASD IM–9216 to include in FINRA's MRVP violations of (1) options position and exercise limits under NASD Rule 2860(b)(3) and (b)(4), and (2) contrary exercise advice procedures under NASD Rule 2860(b)(23). NASD Rule 9216 sets forth FINRA's MRVP, which allows FINRA to impose a fine of up to $2,500 on any member or person associated with a member for a minor violation of the rules identified in IM–9216 (known as ''Minor Rule Violations''). The purpose of the MRVP is to provide meaningful sanctions for minor or technical violations of rules when the initiation of a formal disciplinary proceeding would be more significant than warranted. Minor Rule Violation letters also represent a useful tool for implementing the concept of progressive discipline.

Inclusion of a rule in the MRVP does not mean that all violations of that rule should be treated as Minor Rule Violations, and, in fact, significant violations would not be handled under the MRVP. Accordingly, under the MRVP, FINRA retains the discretion to bring full disciplinary proceedings for any violation of a rule included in the MRVP.

The NASD options rules contain provisions imposing limits on the size of an options position, and limits on the number of options contracts that can be exercised into shares of the underlying security during a fixed period. To address inadvertent violations of these rules, due to among other things, miscounting, technical problems, or a misinterpretation of the position limit calculation methodologies, that in the judgment of FINRA do not materially affect the market, FINRA proposes adding violations of options position and exercise limits as eligible for disposition under the MRVP. Violations of these rules deemed to have a manipulative effect or intent would not be treated as Minor Rule Violations.

Options issued by The Options Clearing Corporation (*i.e.*, exchange-traded options) have specific terms regarding whether options that can be settled only by delivery of the asset underlying the option (typically an equity security) will be automatically exercised at settlement. The NASD options rule has detailed ''contrary exercise advice'' (''CEA'') procedures describing the manner in which an option holder can elect not to exercise an option that normally would be exercised, or exercise an option contract that normally would expire worthless. To prevent option holders from unfairly exploiting after-hours news or market information that affects the price of the underlying security, the CEA notices must be submitted to the broker-dealer and by the broker-dealer to the OCC by certain specified cut-off times. Occasionally, due to technical problems or other inadvertent errors, firms fail to submit CEA notices within the applicable time limits. For those instances, FINRA proposes to have the flexibility to treat the violation as a Minor Rule Violation. Violations of the CEA rules that exploit or are intended to exploit after-hours news would not be treated as Minor Rule Violations.

FINRA notes that position and exercise limits and CEA violations are part of the MRVP of the options

[3] FINRA has filed with the Commission a proposed rule change (SR–FINRA–2008–021) in which FINRA proposes, among other things, to adopt NASD IM–9216 as FINRA Rule 9217, without material change. Assuming Commission approval of this proposed rule change prior to the approval of SR–FINRA–2008–021, FINRA will amend SR–FINRA–2008–021, as necessary, to reflect such approval.

exchanges,[4] therefore including them in FINRA's plan would promote greater consistency in sanctions among substantively similar rules enforced by FINRA and the options exchanges.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with Section 15A(b)(7) of the Act[6] in that it provides for the appropriate discipline for violation of FINRA rules. The proposed rule change also is consistent with Section 15A(b)(8) of the Act[7] in that it furthers the statutory goals of providing a fair procedure for disciplining members and associated persons. FINRA believes that the addition of these violations to the MRVP will provide FINRA staff with the ability to provide meaningful sanctions for minor or technical violations of these rules when the initiation of a formal disciplinary proceeding would be more significant than warranted.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2008–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–023. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–023 and should be submitted on or before July 7, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Section 15 of the Act and the rules and regulations thereunder applicable to a national securities association.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members.[9]

The Commission further believes that FINRA's proposal to sanction members and associated persons who fail to submit CEAs in a timely manner or limit the size of an option position or the number of option contracts is consistent with Sections 15A(b)(7) and 15A(b)(8) of the Act,[10] which require that the rules of an association enforce compliance with, and provide appropriate discipline for, violations of Commission and FINRA rules. In addition, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[11] which governs minor rule violation plans. The Commission believes that the proposed rule change should strengthen FINRA's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with FINRA's rules and all

[4] *See* NASDAQ Options Rules, Chapter X, Section 7 (Penalty for Minor Rule Violations); Boston Options Exchange Rules, Chapter X, Section 2 (Penalty for Rule Violations); Chicago Board Options Exchange Rule 17.50 (Imposition of Fines for Minor Rule Violations); American Stock Exchange Rule 590. Part 1 (General Rule Violations); Philadelphia Stock Exchange Rules F–15 (Minor Infractions of Position/Exercise Limits and Hedge Exemptions) and F–35 (Violations of Exercise and Exercise Advice Rules for Noncash-Settled Equity Option Contracts); International Securities Exchange Rule 1614 (Imposition of Fines for Minor Rule Violations).

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78o–3(b)(7).

[7] 15 U.S.C. 78o–3(b)(8).

[8] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78o–3(b)(7) and(b)(8).

[11] 17 CFR 240.19d–1(c)(2).

other rules subject to the imposition of fines under the MRVP. The Commission believes that the violation of any self-regulatory organization rules, as well as Commission rules, is a serious matter. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that FINRA will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires formal disciplinary action.

FINRA has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**. The Commission hereby grants that request. FINRA's proposal is substantially similar to those of other options exchanges, which previously have been approved by the Commission.[12] The Commission does not believe that FINRA's proposal raises any novel regulatory issues, and no comments were received on any of these earlier proposals. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[13] for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[14] and Rule 19d–1(c)(2) under the Act,[15] that the proposed rule change (SR–FINRA–2008–023), be, and hereby is, approved and declared effective on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–13426 Filed 6–13–08; 8:45 am]

BILLING CODE 8010–01–P

[12] *See, e.g.*, Securities Exchange Act Release No. 57528 (March 19, 2008), 73 FR 15826 (March 25, 2008) (SR–Phlx–2008–18).

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 240.19d–1(c)(2).

[16] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(44).

DEPARTMENT OF STATE

[Public Notice 6259]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Designation of the Rajah (Raja) Solaiman (Sulayman, Sulaiman, Soleiman) Movement (RSM), aka Rajah Solaiman Revolutionary Movement (RSRM) aka Rajah Solaiman Group, aka Rajah Solaiman Islamic Movement (RSIM) and RSM leader Ahmad (Ahmed) Santos, aka Hilarion del Rosario Santos III, aka Abu Lakay, aka Ahmad Islam del Rosario Santos Santos aka Hilarion del Rosario Santos

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13286 of July 2, 2002, and Executive Order 13284 of January 23, 2003, and in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, I hereby determine that the organization known as the Rajah Solaiman Movement (RSM) and aliases and transliterations listed above has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States. In addition, I find that RSM leader Ahmed Santos and aliases has committed or poses a significant risk of committing acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: June 9, 2008.

John D. Negroponte,

Deputy Secretary of State. Department of State.

[FR Doc. E8–13496 Filed 6–13–08; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 6260]

Correction of Advisory Committee Meeting Information, Advisory Committee on International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Notice; correction.

SUMMARY: The Department of State published a document in the **Federal Register** of June 6, 2008, concerning the meeting location and date for the meeting of the Advisory Committee on International Postal and Delivery Services. The meeting date and location were incorrect in the announcement.

FOR FURTHER INFORMATION CONTACT: Christopher Wood, Office of Technical Specialized Agencies (IO/T), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–1044, *woodcs@state.gov.*

Correction

In the **Federal Register** of June 6, 2008, in 93 FR on page 32382, in the first column, correct the ''Date'' and ''Location'' captions to read:

DATES: July 10, 2008 from 2:00 p.m. to about 5:30 p.m. (open to the public).

Location: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Dated: June 11, 2008.

Dennis M. Delehanty,

Designated Federal Officer, Advisory Committee on International Postal and Delivery Services.

[FR Doc. E8–13513 Filed 6–13–08; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 21, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application

by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2008–0113.

Date Filed: March 17, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 7, 2008.

Description: Application of Oceanair Linhas Aereas Ltda. requesting exemption authority and a foreign air carrier permit authorizing it to engage in scheduled foreign air transportation of persons, property and mail between Sao Paulo, Brazil and Los Angeles, California.

Docket Number: DOT–OST–2008–0114.

Date Filed: March 17, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 7, 2008.

Description: Joint Application of Scenic Airlines, Inc. (Scenic) and Grand Canyon Airlines, Inc. (GCA) requesting the transfer to GCA of the certificate of public convenience and necessity, authorizing Scenic to engage in interstate scheduled air transportation of persons, property and mail.

Docket Number: DOT–OST–2008–0117.

Date Filed: March 21, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 11, 2008.

Description: Application of Blue Line requesting an exemption and a foreign air carrier permit authorizing it to provide: (i) Charter foreign air transportation of persons, property and mail from points behind EU Member States, via the EU Member States and intermediate points to any point or points in the United States and beyond; (ii) charter foreign air transportation of persons, property and mail between any point or points in the United States and any point or points in the European Common Aviation Area (''ECAA''); and (iii) other charters.

Docket Number: DOT–OST–2008–0118.

Date Filed: March 21, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 11, 2008.

Description: Application of Cargo B Airlines NV/SA (''Cargo B'') requesting an exemption and a foreign air carrier permit authorizing Cargo B to engage in: (i) Foreign scheduled and charter air transportation of property and mail from any point or points behind any Member State of the European Union, via any point or points in any EU Member State and via intermediate points, to any point or points in the United States and beyond; (ii) foreign scheduled and charter air transportation of property and mail between any point or points in the United States and any other point or points worldwide; (ii) other cargo charter; and (iv) transportation authorized by any additional route rights made available to European Community carriers in the future.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–13507 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 21, 2008

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and Procedures Governing Proceedings To Enforce These Provisions. Answers May Be Filed Within 21 Days After the Filing of the Application.

Docket Number: DOT–OST–2008–0108.

Date Filed: March 17, 2008.

Parties: Members of the International Air Transport Association.

Subject: TC12 North Atlantic-Africa, (except between USA and Reunion), Resolutions and Specified Fares Tables, (Memo 0263). Minutes: TC12 North, Mid, South Atlantic—Middle East, TC12 North, Mid, South Atlantic—Africa, (Memo 0267 / 0283). Intended effective date: 1 May 2008.

Docket Number: DOT–OST–2008–0109.

Date Filed: March 17, 2008.

Parties: Members of the International Air Transport Association.

Subject: TC12 North Atlantic-Africa between USA and Reunion, Resolutions and Specified Fares Tables, (Memo 0264). Minutes: TC12 North, Mid, South Atlantic—Middle East, TC12 North, Mid, South Atlantic—Africa, (Memo 0267 / 0283). Intended effective date: 1 May 2008.

Docket Number: DOT–OST–2008–0110.

Date Filed: March 17, 2008.

Parties: Members of the International Air Transport Association.

Subject: TC12 Mid Atlantic-Africa, Resolutions and Specified Fares Tables, (Memo 0265). Minutes: TC12 North, Mid, South Atlantic—Middle East, TC12 North, Mid, South Atlantic—Africa, (Memo 0267 / 0283). Intended effective date: 1 May 2008.

Docket Number: DOT–OST–2008–0111.

Date Filed: March 17, 2008.

Parties: Members of the International Air Transport Association.

Subject: TC12 South Atlantic-Africa, Resolutions and Specified Fares Tables, (Memo 0266). Minutes: TC12 North, Mid, South Atlantic—Middle East, TC12 North, Mid, South Atlantic—Africa, (Memo 0267 / 0283). Intended effective date: 1 May 2008.

Docket Number: DOT–OST–2008–0116.

Date Filed: March 19, 2008.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 564 TC3 Within South West Pacific Passenger, Revalidating Resolution (Memo 1167). Intended effective date: 1 April 2008.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–13512 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 28, 2008

The following Agreements were filed with the Department of Transportation under sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2008–0120.

Date Filed: March 25, 2008.

Parties: Members of the International Air Transport Association.

Subject: TC23/123 Middle East-South West Pacific, Resolutions and Specified Fares Tables, (Memo 0349), Intended effective date: 1 April 2008.

Docket Number: DOT–OST–2008–0122.

Date Filed: March 27, 2008.

Parties: Members of the International Air Transport Association.

Subject: TC2 Europe-Middle East (Memo 0243). TC2 Europe-Africa (Memo 0254). Expedited Composite Resolutions. Minutes: TC2 Europe-Middle East (Memo 0245). Minutes: TC2 Europe-Africa (Memo 0255). Intended effective date: 1 November 2008.

Docket Number: DOT–OST–2008–0123.

Date Filed: March 28, 2008.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 560—Flex Fares Package. TC23/123 Europe-Japan. Korea Special Passenger Amending. Resolutions Between Europe and Korea (Rep. of), Korea (Dem. Rep. of), (Memo 0169). Intended effective date: 1 June 2008.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–13447 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 28, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2008–0124.

Date Filed: March 28, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 18, 2008.

Description: Application of TUI Airlines Belgium N.V. d/b/a Jetairfly requesting an expedited exemption, and a foreign air carrier permit, authorizing foreign scheduled and charter air transportation of persons, property and mail to the full extent permitted under the United States-European Air Transport Agreement; and to engage in such other air transportation as the Department may authorize pursuant to the prior approval of Part 212.

[FR Doc. E8–13448 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Approval of the Record of Decision for Proposed Development at the Flying Cloud Airport, Eden Prairie, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of approval of the Record of Decision (ROD).

SUMMARY: The FAA is announcing approval of the Record of Decision on the Final Environmental Impact Statement and Section 303c Evaluation for proposed development at the Flying Cloud Airport (FCM), Eden Prairie, Minnesota.

FOR FURTHER INFORMATION CONTACT: Mr. Glen Orcutt, FAA, Airports District Office, 6020 28th Avenue South, Suite 102, Minneapolis, MN 55450, telephone (612) 713–4354; fax: (612) 713–4364.

SUPPLEMENTARY INFORMATION: The ROD approves the proposed development at Flying Cloud Airport including: extension of the main runway to 5,000 feet and the other parallel runway to 3,900 feet; the construction of a new building area; land acquisition; service roads around the east and west ends of the parallel runways; hangar removal; Federal actions regarding installation of navigational aides, airspace use, and approach and departure procedures associated with the proposed development; and noise mitigation requirements included in the Final Agreement and MOU between the Metropolitan Airports Commission and the City of Eden Prairie.

The ROD indicates the project is consistent with existing environmental policies and objectives as set forth in the National Environmental Policy Act (NEPA) of 1969, as amended, and will not significantly affect the quality of the environment.

In reaching this decision, the FAA has given careful consideration to: (a) The role of FCM in the national air transportation system, (b) aviation safety, (c) preferences of the airport owner, (d) anticipated environmental impact, and (e) the decisions of the Minnesota State Legislature.

Discussions of these factors are documented in the Draft Environmental Impact Statement, the Final Environmental Impact Statement (FEIS) and Section 303c Evaluation, for the project. The notice of availability of the FEIS appeared in the **Federal Register** on June 18, 2004 (Volume 69, Number 117, Pages 34161–34162), and the comment period ran through September 17, 2004. The FAA's determinations on the project are outlined in the ROD, which was approved on May 15, 2008.

Issued in Minneapolis, Minnesota, on May 28, 2008.

Robert A. Huber,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. E8–13521 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION [4910–22]

Federal Highway Administration

Environmental Impact Statement: Currituck and Dare Counties, North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent (NOI).

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed project in Currituck and Dare Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. George Hoops, P.E., Major Projects Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601–1418, Telephone: (919) 747–7022.

SUPPLEMENTARY INFORMATION: Pursuant to Title 23, Code of Federal Regulations, Part 771, Environmental Impact and Related Procedures, the FHWA, in cooperation with the North Carolina Turnpike Authority (NCTA) and the North Carolina Department of Transportation (NCDOT), will prepare an EIS addressing proposed improvements in the Currituck Sound area. The proposed study area includes U.S. 158 from NC 168 to NC 12 (including the Wright Memorial Bridge) and NC 12 north of its intersection with U.S. 158 to its terminus in Currituck County. The proposed action is included in NCDOT's 2007–2013 State Transportation Improvement Program (STIP), as well as NCDOT's Draft 2009–2015 STIP, and the Thoroughfare Plan for Currituck County.

On July 6, 1995, FHWA published a notice of intent to prepare an environmental impact statement (EIS) for a Mid-Currituck Sound Bridge project in Currituck County, North Carolina. The Mid-Currituck Sound Bridge project involved a proposal to build a bridge and approach roadways connecting U.S. 158 on the mainland to

NC 12 on the Outer Banks. The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), issued a Draft Environmental Impact Statement (DEIS) on the project in January 1998. FHWA and NCDOT held public hearings and provided a comment period on the DEIS. Since the 1998 DEIS, there have been several changes in the project. These changes led to the decision to rescind the 1995 notice of intent and the 1998 DEIS (**Federal Register** Vol. 73, No. 107, page 31733) and to issue this notice of intent.

Before releasing this notice of intent, FHWA and NCTA began coordinating with Federal and state environmental regulatory and resource agencies and the public in the development of the purpose and need for the proposed action and a conceptual range of alternatives in the project study area. The draft purpose and need for the proposed action includes the following elements: (i) Improving traffic flow on the project area's thoroughfares (NC 12 and U.S. 158), (ii) reducing travel time for persons traveling between Currituck County mainland and Currituck County Outer Banks, and (iii) reducing hurricane clearance times for residents and visitors who use NC 168 and U.S. 158 during a coastal evacuation.

The EIS for the proposed action will consider alternatives that include improving existing roadways (NC 12 and U.S. 158), as well as alternatives that involve building a new Mid-Currituck Sound bridge in combination with improving existing roads. The analysis will also include a range of non-highway improvement alternatives, including no-build, ferry service, expanding transit service, transportation demand management/shifting rental unit start times, and transportation systems management (TSM) alternatives. In addition, NCTA is considering a range of alternatives for the proposed bridge crossing, including (1) Two, three, or four-lane bridges; (2) various interchange configurations for the bridge's connections to the existing roadway network; and (3) a range of potential corridors for the bridge. As part of the EIS, NCTA will also study the feasibility and impacts of developing the proposed project as a tolled facility.

FHWA and NCTA will continue to provide the agencies, local governments, and the public with opportunities for involvement through informational workshops, project newsletters, informational mailings, and other means. Information on the dates, times, and locations of future citizens informational workshops will be posted on the NCTA Web site and will be advertised in the local news media, and newsletters will be mailed to those on the project mailing list. If you wish to be placed on the mailing list, contact Jennifer Harris at the address listed below or by submitting an e-mail to *midcurrituck@ncturnpike.org*. Once completed, the Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above or directed to: Ms. Jennifer Harris, P.E., Staff Engineer, North Carolina Turnpike Authority, 5400 Glenwood Avenue, Suite 400, Raleigh, North Carolina 27612, Telephone (919) 571–3000.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: June 10, 2008.

George Hoops,

Major Projects Engineer, Federal Highway Administration, Raleigh, North Carolina.

[FR Doc. E8–13444 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008 0052]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CHUT LOON.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0052 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before July 16, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0052. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CHUT LOON is:

Intended Use: ''charters.''

Geographic Region: ''San Sebastian River, ICW from Oyster Creek Marina in St. Augustine, Florida.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: June 5, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–13460 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008 0050]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel KIND OF BLUE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0050 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before July 16, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0050. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel KIND OF BLUE is:

Intended Use: ''Six passenger charters and sailing instruction with USCG Master.''

Geographic Region: ''San Diego Coastal Waters.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: June 9, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–13464 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008 0051]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CAROLINA SOUL SONG.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0051 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before July 16, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0051. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CAROLINA SOUL SONG is:

Intended Use: ''Eco tours for very small groups 6 persons or less and special needs persons.''

Geographic Region: ''SC will be base of operations with possible trips to NC, GA, and FL.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: June 9, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–13475 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Advisory Council on Transportation Statistics

AGENCY: Research and Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: This notice announces, pursuant to section 10(A)(2) of the Federal Advisory Committee Act (FACA) (Public Law 72–363; 5 U.S.C. app. 2), a meeting of the BTS Advisory Council on Transportation Statistics (ACTS). The meeting will be held Thursday, July 31, 2008, from 10 a.m. to 4 p.m. The meeting will take place at the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington DC, on the 1st Floor, West Building, in the Oklahoma City Room.

The ACTS, established under section 6007 of Public Law 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the BTS are of high quality and are based upon the best available objective information.

The following is a summary of the meeting's agenda: (1) Introductions and Opening Remarks; (2) Program Update (a) Safety Data, (b) System Performance Data; (3) Challenges in Collecting and Disseminating National Transportation Statistics; (4) Identifying Transportation Data Needs; (5) General Discussion; and (6) Public Comments and Closing Remarks. Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Mrs. Tonya Tinsley-Grisham, the Committee Management Officer at (202) 366–6268 prior to July 31, 2008. Individuals attending the meeting must report to the Lobby of the West Building for admission to the building. Attendance is open to the public, but limited space is available. With the approval of the Chair, members of the public may present oral statements at the meeting. Non-committee members wishing to present oral statements or obtain information should also contact Mrs. Tinsley-Grisham.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, BTS, Attention: Robert A. Monniere, Room E35–330, 1200 New Jersey Ave., SE., Washington, DC 20590 or faxed to (202) 366–3640. BTS requests that written comments be submitted prior to the meeting.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Mrs. Tinsley-Grisham at (202) 366–6268 at least seven calendar days prior to the meeting. Notice of this meeting is provided in accordance with the FACA and the General Service Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 10th day of June, 2008.

Steven D. Dillingham,

Director, Bureau of Transportation Statistics.

[FR Doc. E8–13445 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–08–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice and Request for Comments

AGENCY: Surface Transportation Board.

ACTION: 60-day notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to request from the Office of Management and Budget (OMB) approval without change of an existing information collection. This information collection is described in detail below. Comments are requested concerning (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether this collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Application to Open a Billing Account.

OMB Control Number: 2140–0006.

STB Form Number: STB Form 1032.

Type of Review: Extension without change.

Respondents: Rail carriers, shippers, and others doing business before the STB.

Number of Respondents: 20.

Estimated Time Per Response: Less than .08 hours, based on actual survey of respondents.

Frequency: One time per respondent.

Total Burden Hours (annually including all respondents): Less than 1.6 hours.

Total ''Non-hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: The Board is, by statute, responsible for the economic regulation of freight rail carriers and certain other carriers operating in interstate commerce. This form is used by persons doing business before the Board who wish to open an account with the Board to facilitate their payment of filing fees; fees for the search, review, copying, and certification of records; and other services rendered by the Board. An account holder is billed on a monthly basis for payment of accumulated fees. Data provided is also used for debt collection activities. The application form requests information as required by OMB and U.S. Department of Treasury regulations for the collection of fees. This information is not duplicated by any other agency. In accordance with the Privacy Act, 5 U.S.C. 552a, all taxpayer identification and social security numbers are secured and used only for credit management and debt collection activities.

DATES: Written comments are due on August 15, 2008.

ADDRESSES: Direct all comments to Marilyn Levitt, Surface Transportation Board, Suite 1260, 395 E Street, SW., Washington, DC 20423–0001, or to *levittm@stb.dot.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Application to Open an Account for Billing Purposes, OMB Number 2140–0006.''

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THE STB FORM, CONTACT: Anthony Jacobik, Jr., (202) 245–0346. [Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under section 3506(c)(2)(A) of the PRA, Federal agencies are required, prior to submitting a collection to OMB for approval, to provide a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: June 11, 2008.

Anne K. Quinlan,

Secretary.

[FR Doc. E8–13453 Filed 6–13–08; 8:45 am]

BILLING CODE 4915–01–P

Federal Register

Monday,
June 16, 2008

Part II

Environmental Protection Agency

40 CFR Parts 60 and 63

Standards of Performance for Portland Cement Plants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2007–0877; FRL–8576–1]

RIN 2060–AO42

Standards of Performance for Portland Cement Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing amendments to the current Standards of Performance for Portland Cement Plants. The proposed amendments include revisions to the emission limits for affected facilities which commence construction, modification, or reconstruction after June 16, 2008. The proposed amendments also include additional testing and monitoring requirements for affected sources.

DATES: Comments must be received on or before August 15, 2008. If any one contacts EPA by June 26, 2008 requesting to speak at a public hearing, EPA will hold a public hearing on July 1, 2008. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before July 16, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0877, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center (6102T), Standards of Performance (NSPS) for Portland Cement Plants Docket, Docket ID No. EPA–HQ–OAR–2007–0877, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (6102T), Standards of Performance (NSPS) for Portland Cement Plants Docket, Docket ID No. EPA–HQ–OAR–2007–0877, EPA West, Room 3334, 1301 Constitution Avenue, 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. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0877. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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 EPA Docket Center, Standards of Performance (NSPS) for Portland Cement Plants Docket, 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 Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243–02), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–5605; fax number: (919) 541–5450; e-mail address: *barnett.keith@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. General Information
  A. Does this action apply to me?
  B. What should I consider as I prepare my comments to EPA?
  C. Where can I get a copy of this document?
  D. When would a public hearing occur?
II. Background Information on Subpart F
  A. What is the statutory authority for the proposed amendments to subpart F?
  B. What are the current Portland Cement Plant (PCP) NSPS?
III. Summary of the Proposed Amendments to Subpart F
IV. Rationale for the Proposed Amendments to Subpart F
  A. How is EPA proposing to change the emission limits for future affected facilities?
  B. How is EPA proposing to amend the testing requirements?
  C. How is EPA proposing to amend the monitoring requirements?
  D. Why are we not proposing to revise the other emission limits in the NSPS?
  E. What other changes are being proposed?
  F. What is EPA's sector-based approach and how is it relevant to this rulemaking?
  G. How is EPA addressing greenhouse gas emissions from the portland cement industry?
V. Summary of Cost, Environmental, Energy, and Economic Impacts of the Proposed Amendments to Subpart F
  A. What are the air quality impacts?
  B. What are the water quality impacts?
  C. What are the solid waste impacts?
  D. What are the secondary impacts?
  E. What are the energy impacts?
  F. What are the cost impacts?
  G. What are the economic impacts?
VI. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

Categories and entities potentially regulated by this proposed rule include:

Category	NAICS code [1]	Examples of regulated entities
Industry	327310	Cement manufacturing.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 60.60 (subpart F). If you have any questions regarding the applicability of this proposed action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2007–0877. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action is available on the World Wide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing by June 26, 2008, a public hearing will be held on July 1, 2008. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Mr. Keith Barnett, listed in the **FOR FURTHER INFORMATION CONTACT** section, at least 2 days in advance of the hearing.

II. Background Information on Subpart F

A. What is the statutory authority for the proposed amendments to subpart F?

New source performance standards (NSPS) implement Clean Air Act (CAA) section 111(b) and are issued for categories of sources which EPA has listed because they cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The primary purpose of the NSPS is to attain and maintain ambient air quality by ensuring that the best demonstrated emission control technologies are installed as industrial infrastructure is modernized. Since 1970, the NSPS have been successful in achieving long-term emissions reductions in numerous industries by assuring cost-effective controls are installed on new, reconstructed, or modified sources.

Section 111 of the CAA requires that NSPS reflect the application of the best system of emission reductions achievable which, taking into consideration the cost of achieving such emission reductions, and any non-air quality health and environmental impact and energy requirements, the Administrator determines has been adequately demonstrated. See CAA section 111(a)(1). This level of control is commonly referred to as best demonstrated technology (BDT). In assessing whether a standard is achievable, EPA must account for routine operating variability associated with performance of the system on whose performance the standard is based. See *National Lime Ass'n* v. *EPA,* 627 F. 2d 416, 431–33 (D.C. Cir. 1980). Today's proposal considers all of these factors, including both short- and long-term operating variability associated with potential control technologies.

Common sources of information as to what constitutes a best demonstrated technology, and for assessing that technology's level of performance, include best available control technology (BACT) determinations made as part of new source review, emissions limits that exist in State and Federal permits for recently permitted sources, and emissions test data for demonstrated control technologies collected for compliance demonstration or other purposes. EPA compares permit limitations and BACT determination data with actual performance test data to insure that permitting and BACT limitations are representative of actual performance and also to identify any site specific factors that could influence general applicability of the information to the entire source category. EPA also carefully examines test data to insure that control devices were properly designed and operated during the test.

Section 111(b)(1)(B) of the CAA requires EPA to periodically review and revise these standards of performance, as necessary, to reflect improvements in methods for reducing emissions. We promulgated Standards of Performance For Portland Cement Plants (40 CFR part 60, subpart F) on December 23, 1971 (36 FR 24876). Since then, we have conducted three reviews of the standards (39 FR 20793, June 14, 1974; 39 FR 39874, November 12, 1974; and 53 FR 50354, December 14, 1988).

B. What are the current Portland Cement Plant (PCP) NSPS?

The PCP NSPS applies to new, modified, and reconstructed affected

facilities in the portland cement manufacturing industry that commenced construction, reconstruction, or modification after August 17, 1971. Affected facilities at PCP include the kiln, clinker cooler, raw mill system, finish mill system, raw mill dryer, raw material storage, clinker storage, finished product storage, conveyor transport points, bagging and bulk loading and unloading systems. Unless otherwise noted, the term ''new'' as used in this preamble includes newly constructed, modified or reconstructed units.

III. Summary of the Proposed Amendments to Subpart F

The proposed amendments to subpart F of 40 CFR part 60 are summarized in Table 1 of this preamble.

TABLE 1. SUMMARY OF THE PROPOSED AMENDMENTS

Citation	Proposed change
60.62	Change the title of § 60.62 to standards. Revise paragraph (a)(1) to include paragraph (a)(1)(i) which specifies that the current emission limit for particulate matter (PM) applies to kilns constructed, reconstructed, or modified after August 17, 1971 but on or before June 16, 2008. Add a paragraph (a)(1)(ii) which limits PM emissions for kilns that commence construction, reconstruction, or modification after June 16, 2008, emissions to 0.086 pounds of PM per ton (lb/ton) of clinker. Revise paragraph (a)(2) to clarify that the opacity limit does not apply to kilns constructed, reconstructed, or modified after August 17, 1971 but on or before June 16, 2008 that use a bag leak detection system or PM continuous emission monitoring system. Add paragraph (a)(3) which requires kilns constructed, reconstructed, or modified after June 16, 2008 to meet a nitrogen oxides (NO_X) emission limit of 1.50 lb/ton of clinker on a 30-day, 24-hour rolling average basis. Add paragraph (a)(4) which requires kilns constructed, reconstructed, or modified after June 16, 2008 to meet either a sulfur dioxide (SO_2) emission limit of 1.33 lb/ton of clinker on a 30-day, 24-hour rolling average basis or demonstrate a 90-percent reduction in SO_2 emissions from the kiln. Revise paragraph (b)(1) to include a paragraph (b)(1)(i) which specifies that the current PM limit applies to clinker coolers constructed, reconstructed, or modified after August 17, 1971 but on or before June 16, 2008. Add a paragraph (b)(1)(ii) which limits PM emissions from clinker coolers constructed, reconstructed, or modified after June 16, 2008 to 0.086 pounds of PM per ton (lb/ton) of clinker. Revise paragraph (b)(2) to clarify that the opacity limit does not apply to clinker coolers constructed, reconstructed, or modified after August 17, 1971 but on or before June 16, 2008 that use a bag leak detection system or PM continuous emission monitoring system.
60.63	Revise paragraph (a) to correct applicability term (''subpart'' instead of ''part'') and add the word ''clinker'' before the phrase ''production rate'' to clarify that daily recordkeeping requirement is for clinker production rate. Revise paragraph (b) to include paragraph (b)(1) which specifies monitoring requirements for kilns and clinker coolers constructed, modified, or reconstructed after August 17, 1971 but on or before June 16, 2008. Paragraph (b)(1)(i) contains the current requirements for continuous opacity monitoring systems (COMS). Paragraphs (b)(1)(ii) and (iii) allow the source to install a bag leak detection system or a PM CEMS in lieu of a COMS. Also revise paragraph (b) to include paragraph (b)(2) which specifies monitoring requirements for kilns and clinker coolers constructed, modified, or reconstructed or after June 16, 2008. Paragraphs (b)(2)(i) and (ii) require the source to install a bag leak detection system or a PM continuous emission monitoring system. Revise paragraph (c) to clarify that the alternative for visible emission monitoring applies to the requirement in paragraph (b)(1)(i) for a continuous opacity monitoring system. Add paragraph (f) to which specifies installation and operation requirements for bag leak detection systems. Add paragraph (g) which specifies the required installation, operation, and maintenance procedures for a PM continuous emission monitoring system. Add paragraph (h) which specifies requirements for weight measurement system for clinker production from kilns constructed, modified or reconstructed on or after June 16, 2008. Add paragraph (i) to require a NO_X continuous emission monitoring system for each kiln subject to the NO_X emission limit. Add paragraph (j) to require a SO_2 continuous emission monitoring system for each kiln subject to the SO_2 emission limit. Add paragraph (k) to require that NOX and SO_2 continuous emission monitoring systems be installed, operated, and maintained according to Performance Specification 2 of Appendix B to part 60 and that monitors comply with quality assurance requirements in Procedure 1 of Appendix F to part 60. Add paragraph (l) to require that NOX and SO_2 monitors record data during all periods of operation. Add paragraph (m) to require a continuous exhaust flow rate monitoring system for each kiln subject to the NO_X or SO_2 emissions limit. Add paragraph (n) to require the use of an electrostatic precipitator (ESP) predictive model to monitor the performance of ESPs controlling PM emissions from kilns or clinker coolers.
60.64	Revise paragraph (b)(1) to add definition of the term ''P'' in Equation 1 for new kilns subject to PM emission limit in lb/ton of clinker production. Add paragraph (b)(5) to require repeat PM performance tests (every 5 years) for kilns and clinker coolers. Add paragraph (b)(6) to require visible emissions monitoring for sources other than kilns and clinker coolers. Add paragraph (c) which specifies procedures for converting concentration of NO_X and SO_2 to pounds per ton of clinker produced (30 day rolling average).
60.66	Update to specify authorities to be retained by the Administrator.

IV. Rationale for the Proposed Amendments to Subpart F

A. How is EPA proposing to change the emission limits for future affected facilities?

For ''new'' affected facilities constructed, modified, or reconstructed after June 16, 2008, we are proposing:

- To change the format of the PM emission limits from lb/ton of dry feed to lb/ton of clinker product;
- To reduce the PM emission limit for kilns from 0.3 lb/ton of dry feed to 0.086 lb/ton of clinker;
- To set a limit on NO_X emissions from kilns of 1.50 lb/ton of clinker; and
- To set a limit on SO_2 emissions from kilns of 1.33 lb/ton of clinker, or, in the alternative, demonstrate a reduction in SO_2 emissions from the kiln of at least 90 percent;
- To reduce the PM emissions limit for clinker coolers from 0.1 lb/ton dry feed to 0.086 lb/ton of clinker; and
- To add new monitoring options of a bag leak detector or PM continuous emission monitoring systems (CEMS) for kilns and clinker coolers to demonstrate compliance with the PM limits in lieu of the requirement for continuous opacity monitoring systems (COMS).

The emission limits for affected facilities constructed, modified, or reconstructed before June 16, 2008 remain unchanged.

In determining BDT we generally look at the controls and control performance of new sources. In the case of cement kilns we reviewed recently issued permits and BACT determinations issued by States to identify emissions limits more stringent than the current subpart F (and to understand if limits more stringent than those in subpart F are commonplace or rare, or cover additional air pollutants). We believe that the use of State permit data and BACT determination developed as part of new source review is appropriate because a BACT determination evaluates available controls, their performance, cost, and non-air environmental impacts. The main difference between those determinations and a BDT determination for purposes of a new source performance standard is that a BACT determination is made on a site-specific basis. Therefore, in evaluating BACT determinations, we have to account for any site-specific factors that may not be applicable to the source category as a whole. We have also reviewed data gathered in support of related rules involving the portland cement industry, notably the National Emission Standards for Hazardous Air Pollutants (NESHAP) for portland cement kilns issued pursuant to section 112 of the CAA, and the NESHAP for hazardous waste-burning Portland cement kilns, also implementing section 112 of the CAA.

We also collected emissions test data from a number of sources. The emission test data is used to verify the achievable performance of the controls, and to evaluate whether or not the permit levels reviewed accurately reflect control device performance.

Our review of permits and actual test data from portland cement sources, and discussions with industry representatives and State environmental agencies indicates that certain changes have occurred since the 1988 review of the NSPS, and that these changes are still continuing. We found that older, less energy efficient wet and long dry kilns are being replaced with preheater/precalciner kilns because preheater/precalciner kilns have superior energy efficiency and increased clinker capacity. According to the industry, all new kilns will be preheater/precalciner kilns. We confirmed this by reviewing a detailed listing of portland cement kilns which indicates that since 2000 all kilns constructed or modernized are of the preheater/precalciner design.[1]

The information also revealed that recently built kilns are subject to more stringent limits on their emissions through State permitting processes than those currently in the PCP NSPS. In addition, many State permits contain emission limits for NO_X and SO_2, pollutants that are not regulated under the current NSPS. (See footnote 1) Modern preheater/precalciner kilns and improved combustion process designs and add-on controls that greatly lower NO_X emissions are increasingly being used to meet State permit limits. Our review of permits, BACT determinations, and emissions test data show that SO_2 emissions are typically low as a result of the inherent scrubbing action of alkaline raw materials in the kiln and raw mill as well as the typically low sulfur content of raw materials and fuel. However, there are a few locations where the raw materials used in production of clinker contain high levels of sulfur. In these few situations, wet scrubbers or dry lime sprayers have been used to reduce SO_2 emissions in order to meet State SO_2 limits.

Preheater/precalciner kilns have in-line raw mills, which means that the kiln exhaust gas is routed to the raw mill and then to the final PM control device. Therefore, the kiln and raw mill exhaust through the same stack. In order to maximize energy efficiency, facilities route as much clinker cooler exhaust as possible to the kiln (typically as tertiary air), and sometimes to the raw mill to recover heat from the clinker cooling operation. However, typically some portion of the clinker cooler gas flow exhausts directly to atmosphere through its own stack so that clinker coolers are one of the enumerated units covered by the NSPS, and one of the emission points addressed by these proposed amendments.

As previously mentioned, older kilns are typically replaced with new preheater/precalciner kilns rather than being modified or reconstructed. However, because modified and reconstructed kilns are also subject to NSPS, we evaluated the situation where an existing kiln becomes subject to NSPS through modification or reconstruction. We identified only two instances since 1990 where an existing kiln was significantly modified rather than replaced with a new kiln, so we do not expect this to be a common occurrence. Moreover, in one such case a wet kiln was converted to a semi-dry process that included a preheater/precalciner. Performance data from this kiln indicate that the emissions of SO_2 and NO_X are actually lower than would have been expected if the kiln had been replaced with a new preheater/precalciner kiln.[2] Therefore, we expect that the emission limits proposed for new preheater/precalciner kilns would be applicable to this type of conversion. In the second case, a long dry kiln was shortened and a preheater/precalciner added. A modification of this type would be expected to use the same technology in the precalciner/preheater section as a new preheater/precalciner kiln and the resulting modified kiln would basically be the same as a new kiln from the standpoint of criteria pollutant emissions control. Accordingly, EPA believes that the limits proposed today are appropriate for new, modified, and reconstructed kilns since the preheater/precalciner design will be utilized in each of these instances.

1. Format of the Standard

The current NSPS limits for PM are expressed on a pound of PM per ton (lb/ton) of dry feed input format. Emission limits are typically normalized to some type of production or raw material input value because this allows

[1] Technical Support Document for Portland Cement NSPS Review. May 2008.

[2] Lone Star's Unique Approach to Environmental Challenges. O.P. Jepsen and B.P. Keefe, Fuller Company, Cement Industry Technical Conference, IEEE–IAS/PCA, 2001.

comparison (and ultimately the ability to set a single standard) for different sized facilities. (A common example of normalization is expressing vehicle fuel economy in terms of miles of gasoline per vehicle mile traveled, e.g., miles per gallon.) The 1971 NSPS uses a pound of pollutant per ton dry feed basis as the normalizing parameter. In these proposed amendments we are adopting a new normalizing parameter of lb/ton of clinker—i.e., normalizing based on kiln output rather than input for sources constructed, reconstructed or modified after June 16, 2008.

Adopting an output-based standard avoids rewarding a source for becoming less efficient, i.e., requiring more feed to produce a unit of product, therefore promoting the most efficient production processes. As an example, assume a cement kiln rated at 1.2 million tons per year (tpy) has a NO_X emission limit of 1.5 lb/ton of clinker (output). The equivalent input-based limit would be 0.909 lb/ton of feed (on average 1.65 tons of feed produce one ton of clinker, so a kiln rated at 1.2 million tpy clinker uses 1.98 million tpy of feed). Under either an input- or output-based standard, the maximum allowed NO_X emissions would be 900 tpy (1.5 lb/ton clinker × 1.2 million tons clinker ÷ 2000 = 900 tons = 0.909 lb/ton feed × 1.98 million tons feed ÷ 2000). However, if a facility has a less efficient kiln, for example it requires 1.7 tons of feed to produce one ton of clinker (so the feed input is now 2.04 million tons), this kiln would be allowed to emit 927 tpy of NO_X (0.909 lb/ton feed × 2.04 million tons feed ÷ 2000) under the input-based standard of 0.909 lb/ton of feed, but still only 900 lb per year of NO_X under the 1.5 lb/ton of clinker output-based standard.

Over the short term, the measurement of kiln output is not as exact as the measure of kiln input. For this reason, we are basing compliance with the proposed NO_X and SO_2 emission limits on a 30 day rolling average. We believe this will alleviate the issues related to the inaccuracy of short-term output measurements. However, industry has requested the option to convert to an input-based standard to accommodate site-specific configurations and operational limitations.[3]

In the following discussions, emissions were typically reported as a concentration or per ton of feed. The BACT permit limits discussed were typically based on output. We have converted all the data to an output based standard using a conversion factor of 1.65 tons of input equals one ton of clinker. More information on conversion may be found in the technical support document (see footnote 1).

We are specifically requesting comment on the benefits of an output-based standard, output measurement methods and their associated errors, provisions that would allow a site to convert to an input-based standard, any limitations we should impose on conversion, and the appropriate averaging times. Information on how conversions from input-based emission limits and test data and/or concentration-based data to output-based limits and test data may be found in the Technical Support Document for the Portland Cement NSPS review (see footnote 1).

2. PM

The most effective control devices to reduce PM emission from cement kilns and clinker coolers identified in the original NSPS were fabric filters and electrostatic precipitators (ESPs). These continue to be the most effective PM controls in use, capable of removing over 99.9 percent of the PM from the exhaust gas. At the time of the 1988 review, 17 new kilns that had become subject to the NSPS since the 1979 review were controlled by fabric filters and 13 by ESPs. Of the 21 clinker coolers with a separate exhaust stack that had become subject to the NSPS, 17 were controlled by fabric filters, and four were controlled by gravel bed filters. Gravel bed filters perform similarly to fabric filters except they use a moving bed of gravel to capture the particulate rather then cloth or membrane fabric. We do not expect new facilities to install gravel bed filters.

Though ESPs and fabric filters have comparable removal efficiencies based on short-term tests, recently built new kilns have fabric filters as PM controls, and we expect this trend to continue. ESPs applied to cement kilns must be deenergized if the carbon monoxide (CO) or excess air levels rise above a preset critical level where an explosion could occur, which results in short periods of high emissions. The high resistivities of PM from a cement kiln require gas conditioning if an ESP is used. In addition, resistivity can change if the chemistry of the clinker changes. ESP performance can also be affected by the particle size distribution. Fabric filters are not affected by these factors, and fabric filters control generally to the same concentration irrespective of the PM loading at the filter inlet, though some variability in PM emissions from fabric filters does occur due to seepage and leakage.[4] Therefore, we expect the long-term performance of a fabric filter to be superior to an ESP. For this reason, we believe that well-operated and maintained fabric filters are the best technology for control of PM emissions at portland cement kilns, and so are basing this part of the proposal on use of fabric filters for PM control.

In assessing the level of performance constituting BDT (i.e. the level of performance achievable by well-operated and maintained fabric filters in this industry considering normal operating variability) we reviewed data on PM limits in eight recently issued permits for new cement kilns, all of which are equipped with fabric filters. The permit limits for PM for these kilns were in various units, but were converted to a lb/ton output basis. (see footnote 1) The PM limits ranged from 0.093 to 0.28 lb/ton of clinker, and the average was 0.16 lb/ton. In order to determine if the permitted PM emissions limits were representative of actual performance we reviewed two data sets measured by EPA Reference Method 5 (40 CFR part 60, Appendix A–3). The first set was comprised of 21 emission tests of portland cement kilns equipped with fabric filters at various domestic locations which fabric filters were (reportedly) equipped with membrane bags. These PM emissions ranged from 0.0023 up to 0.4724 lb/ton of clinker with a median of 0.1360 lb/ton. Fifteen of the 21 tests were below 0.16 lb/ton of clinker. All of the tests where the emissions were above 0.16 lb/ton of clinker, except one, were on kilns that were not preheater/precalciner kilns. The one test on a preheater/precalciner that was above 0.16 lb/ton of clinker was on a kiln built in 1981. Therefore, we have reason to doubt that the data above 0.16 lb/ton of clinker are representative of the most current designs. We also reviewed 37 emissions tests for PM from Florida kilns equipped with fabric filters where the bag type was unknown. The range was 0.015 to 0.153 lb/ton of clinker, so all 31 tests were below 0.16 lb/ton. Although these are single test results, and so are unlikely to reflect all the operating variability associated with air pollution control device performance, these data still suggest that a limit of 0.16 lb/ton of clinker is achievable by new cement kilns equipped with a fabric filter.

We also evaluated the performance of fabric filters using membrane bag technology, generally considered the

[3] E-mail, H. Ybanez, Holcim, Inc to K. Barnett, EPA, February 27, 2008.

[4] Technical Support Document for HWC MACT Standards—Volume I: Description of Source Categories, U.S. Environmental Protection Agency. September 2005, Section 3.2.

most efficient type of fabric filter. Membrane bags have superior performance to the cloth bags that are part of the standard fabric filter design. Cloth bags capture PM in the interstices of the woven fabric and form a primary dust cake. Until the primary dust cake forms cloth bags are inefficient as filters. Therefore, each time the bag is cleaned emissions increase until the primary dust cake reforms. Emissions also occur when the pressure drop becomes so high that the PM migrates completely through the fabric. Membrane bags, in contrast, operate under the principle of surface filtration, i.e., the PM is captured on the surface of the bag. This results in more consistent performance (no need to build up a primary dust cake). In addition, at a constant airflow membrane bags reduce the average pressure drop across the fabric filter. However, membrane bags are more expensive than cloth bags.[5]

We reviewed 19 emission tests conducted on four portland cement kilns where we were able to establish that the facilities used fabric filters with membrane bags, and where the kilns had been built in the last 10 years, so we could be reasonably certain the control device was representative of the latest fabric filter design. Thirteen of those tests were on a cement kiln that burns hazardous waste. We believe there is no difference in the performance of a fabric filter for PM applied to a kilns that burn hazardous waste and those that do not because PM emissions are largely contributed by non-hazardous waste feed streams, and because fabric filters control PM emissions generally to the same concentration irrespective of the PM loading at the inlet (see 69 FR 21225 and 21233). The individual test results converted to an output basis ranged from 0.0023 to 0.10176 lb/ton of clinker with an average of 0.0357 lb/ton. In order to account for variability, we analyzed the statistical variation by calculating a standard deviation of the test averages, multiplying the standard deviation by the t value for the 95th or 99th percentile, and adding this value to the average of all the tests. The result was we determined that a level of 0.0830 lb/ton of clinker represented an emissions limit that will not be exceeded 95 percent of the time and a level of 0.1025 lb/ton of clinker represented an emissions limit that will not be exceeded 99 percent of the time. EPA has also performed a different statistical analysis of the data from the hazardous waste-burning cement kiln equipped with a membrane fabric filter, applying to the data a so-called universal variability factor derived from the performance of the best performing (lowest emitting) PM performers equipped with fabric filters across the hazardous waste combustor source category. This variability factor quantifies both short-term and long-term operating variability, i.e., variability associated with the conditions of the individual compliance test and variability associated with the performance of the control equipment over time. See generally 72 FR 54878–79, September 27, 2007. (This approach is more sophisticated, since it accounts for both short-term and long-term variability, whereas variability in the individual runs comprising the compliance tests (i.e., the 95th or 99th percentile of those data), is more a measure of short-term variability alone, see 72 FR 54878). The standard under this analysis is 0.0069 gr/dscf corrected to 7 percent oxygen. See 71 FR 14669, March 23, 2006. Using a typical value of 54,000 dry standard cubic feet (dscf) of exhaust produced per ton of kiln feed and one ton of clinker producer per 1.65 tons of feed, 0.0069 gr/dscf converts to 0.086 lb/ton of clinker. (see footnote 1)

We are proposing this level as BDT for PM emitted by new portland cement kilns, as measured by EPA Reference Method 5 in 40 CFR part 60, Appendix A–3. Our analysis of individual stack results from the newer kilns equipped with membrane bag-equipped fabric filters confirms that the level is achievable, the level is between the 95th or 99th percentile of those data, and as just explained, this level accounts for all of the potential operating variability associated with operation of a membrane-bag fabric filter.

We evaluated the costs of the different control levels discussed above. This evaluation, and all subsequent cost, environment, and energy impacts on a per kiln basis are based on a model preheater/precalciner kiln with a rated capacity of 1.2 million tpy of clinker. The average capacity of kilns which were constructed beginning in 2000 and were operating in 2006 was approximately 1.3 million tpy. We choose a model kiln with a capacity slightly lower than average to provide a more conservative cost estimate (smaller kilns tend to have a greater control cost per ton of capacity). The other kiln design specifications (flue gas flow rates, temperatures, etc.) may be found in the Technical Support Document (See Footnote 1).

Based on our assessment that all new fabric filters with standard cloth bag will achieve a level of 0.16 lb/ton of clinker, and that new kilns would at least be equipped with this type of fabric filter, there are no costs or other impacts associated with meeting a PM emissions limit to 0.16 lb/ton of clinker. There are a variety of regulatory reasons that new kilns, on average, currently meet a 0.16 lb/ton of clinker PM limit, and we believe it is appropriate to use this level as the baseline in our cost analysis. We considered using a baseline of 0.5 lb/ton of clinker (equivalent to the current NSPS). However, not only is this level inappropriate because it does not reflect current operating performance, but choosing 0.5 lb/ton of clinker as the baseline would not have changed our decision in any case.

To achieve a level of 0.086 lb/ton of clinker, a new kiln with a capacity of 1.2 million tpy of clinker production may have to equip the fabric filter with more expensive membrane bags at an estimated capital cost of $1.3 million and at a total annualized cost of $176,000 per year. This includes additional operating and maintenance costs, and amortized capital costs. The estimated emission reduction over the baseline would be 44 tpy for the model kiln and the cost per ton of additional PM control is $3,969. This cost appears to be reasonable to EPA, given that it is well within the range of cost-effectiveness for total PM control accepted as reasonable for other stationary sources. See, e.g., 70 FR 9715, February 28, 2005 (cost effectiveness of $8,400 per ton of total PM considered reasonable for proposed rule for electric utility steam generating units) and 71 FR 9876, February 27, 2006, promulgating the proposed rule.

We also analyzed the cost per ton of fine PM (PM of 2.5 micrometers or less) emissions reduction. Data from development of the PM National Ambient Air Quality Standards (NAAQS) indicate that the majority of the adverse health effects from PM exposure are from exposure to fine PM (although exposure to coarse PM is likewise associated with health effects, see 71 FR 61184–85, October 17, 2006). As a result, EPA established a NAAQS for fine PM separate from the NAAQS for coarse PM. Based on data from EPA's Compilation of Emission Factors (AP–42), 45 percent of the PM from a cement kiln fabric filter is fine PM. Therefore, the estimated emissions reduction of fine PM resulting from a total PM standard of 0.086 lb/ton of clinker is 19.8 tpy for the model kiln and the cost per ton of fine PM reduction is $8,819.

In most cases there would be no non-air impacts associated with the

[5] Cement Americas ''Optimizing Kiln Operations by Improving Baghouse Performance'' November 2001, pp. 1–5.

proposed standard because PM captured in the control device for a preheater/precalciner kiln is mainly raw materials which are recycled back to the kiln, rather then disposed of as solid waste. In the case of a kiln equipped with an alkali bypass, however, additional PM captured in the alkali bypass fabric filter would typically be disposed as a solid waste. This PM is high in alkali materials and cannot be recycled back to the kiln or mixed with the product. Based on data collected on amounts of solids generated by the PM controls, the solids from the alkali bypass are about 1 percent of total collected solids (i.e., 99 percent is collected in the main fabric filter and recycles to the kiln). Therefore, the amount of additional solid waste resulting from this proposed PM emissions limit would be expected to be minimal. We do not anticipate any adverse energy impacts because membrane bags reduce control device pressure drop and thus reduce energy use. Given the reasonable costs, and minimal solid waste impacts we are proposing a PM emissions level of 0.086 lb/ton of clinker as BDT.

As previously noted, fabric filters are also the predominant control for another emission point, clinker coolers. Included in the 1988 review of the NSPS were 12 PM emissions tests for clinker coolers where the coolers had separate stacks. One test was performed under abnormal operating conditions and so was not used in our analysis. The remaining 11 tests showed a PM emissions range of 0.008 to 0.05 lb/ton of feed, which converts to 0.013 up to 0.083 lb/ton of clinker.[6] Tests on three clinker coolers associated with preheater/precalciner kilns built in the last 10 years using fabric filters for PM control showed a range of 0.0038 to 0.0094 lb/ton of feed which converts to 0.0063 to 0.01551 lb/ton of clinker. Based on these test data, we believe that the current clinker cooler controls used on new sources can meet the same level of PM control as a kiln with membrane bags, i.e., 0.086 lb/ton of clinker. Since new facilities are already installing controls (usually fabric filters) capable of meeting the proposed clinker cooler limit of 0.086 lb/ton of clinker, the incremental costs of the proposed emissions limit would be very low or zero, as would any non-air environmental and energy impacts.

We considered proposing a limit below 0.086 lb/ton of clinker for clinker coolers, based on the emissions shown for the three newer facilities. Based on these data a limit of 0.0245 lb/ton of clinker (representing the 99th confidence interval) would be achievable for new sources. However, we believe that these limited data are not sufficient to support a lower PM limit for clinker coolers, since these data are unlikely to fully reflect control device operating variability. We are requesting comment, however, on the achievability of a lower PM emission limit for clinker coolers.

3. NO_X [7]

The current NSPS does not regulate the emissions of NO_X. Concurrent with this 8-year review we are proposing an NSPS for NO_X that would apply to kilns constructed, modified, or reconstructed after June 16, 2008. The high temperatures and oxidizing atmospheres required for cement manufacturing are favorable for NO_X formation. In cement kilns, NO_X emissions are formed during fuel combustion primarily by the oxidation of molecular nitrogen present in combustion air (referred to as thermal NO_X) and the oxidation of nitrogen compounds in fuel (referred to as fuel NO_X). Many States issuing construction and operating permits for new kilns have specified emission limits for NO_X. EPA's BACT/RACT/LAER Clearinghouse database shows that for the period 2001 through 2007, 30 determinations for new, modified or reconstructed kilns included NO_X limits. Emissions of NO_X are typically reduced through process controls such as burner design (low-NO_X burners) and staged combustion in the calciner (SCC). NO_X emissions from kilns using process designs such as low NO_X burners and SCC emit on average about 2.5 lb/ton of clinker. The exclusive add-on control used to reduce NO_X emissions from kilns operating in the U.S. is selective noncatalytic reduction (SNCR). In recent Prevention of Significant Deterioration permits for portland cement kilns, States have determined BACT emission limits for NO_X based on the use of SNCR in combination with well-designed SCC and other process designs such as low NO_X burners. In SNCR systems, a reagent such as ammonia or urea is injected into the flue gas at a suitable temperature zone, typically in the range of 1,600 to 2,000 °F and at an appropriate ratio of reagent to NO_X. SNCR system performance depends on temperature, residence time, turbulence, oxygen content, and other factors specific to the given gas stream. On average, SNCR achieves approximately a 35 percent reduction in NO_X at a ratio of ammonia-to-NO_X of about 0.5 and a reduction of 63 percent at an ammonia-to-NO_X ratio of 1.0. At the high ratios, including ratios above 1, some ammonia may not react with NO_X and will be emitted. The unreacted ammonia is referred to as ammonia slip. It can also produce a visible stack plume when the ammonia forms ammonia chlorides. Under certain atmospheric conditions ammonia can also react with nitrates and sulfates, both of which can be available in cement kiln exhaust, to form fine PM emissions, see 69 FR 4583, January 30, 2004, and ammonia itself is a pollutant under the CAA. Limits on ammonia slip are often imposed by permits or design requirements, which in some instances constrain the NO_X reduction achievable by an SNCR system.

Another NO_X control technology, SCR, is used in the electric utility industry to reduce NO_X emissions from boilers and has been used worldwide on three cement kilns in Europe. SCR is capable of reducing NO_X emissions by about 80 percent. Though SCR is demonstrated in Europe, SCR has never been used on any cement kilns in the U.S. Uncertainties exist as to its specific performance level and catalyst plugging and fouling, which affects operating costs (see discussion below).

One control option considered was to make to make no changes in the current NSPS and thus not regulate NO_X emissions. However, we rejected that option because NO_X is emitted by cement kilns, is currently controlled at most new cement kilns, and, based on our review of recently issued permits, demonstrated technologies are available to reduce NO_X emissions considering costs and other impacts.

In proposing a NO_X emission limit, we reviewed recently issued permits, recent BACT determinations and recent emissions data for preheater/precalciner kilns to establish potential NO_X control levels for evaluation. Most of the emission limits and test data are 30 day averages based on data from continuous emissions monitors. A first step in doing so is to establish a baseline from which control options can be evaluated. NO_X emissions from three recently permitted preheater/precalciner kilns utilizing well-designed and operated process designs including SCC, averaged NO_X emissions of 1.62, 1.88 and 1.97 lb/ton

[6] Portland Cement Plants—Background Information for Proposed Revisions to Standards. EPA–450/3–85–003a, May 1985. pp. 4–9 to 4–13 and C–2 to C–5.

[7] Information on NO_X emissions from preheater/precalciner kilns, factors affecting NO_X emissions, process controls that reduce NO_X emissions, staged combustion, selective noncatalytic reduction, selective catalytic reduction and more can be found in the EPA publication ''Alternative Control Techniques Document Update—NO_X Emissions from New Cement Kilns, EPA–453/R–07–006, November 2007, and is available on EPA's Technology Transfer Network at *http://www.epa.gov/ttn/oarpg.*

of clinker. These levels are achieved at kilns that are not equipped with additional add-on controls. While demonstrating the capabilities of kilns utilizing well-designed process controls including SCC but not add-on controls, these emission levels are not necessarily representative of what all new kilns would achieve even with similar process designs. Several factors can influence NO_X emissions. Changes in the kiln feed rate, chemical composition, or moisture content of raw materials can cause kiln temperatures to vary, resulting in variation in NO_X emissions. Raw materials from the same quarry can vary in chemical composition from day to day. Certain raw materials require higher temperatures and longer heating times to properly calcine the materials (referred to as burnability). For example, raw materials that contain high alkali content must be heated longer and at higher temperatures to volatilize and remove the alkali compounds. With higher temperatures and longer residence times, NO_X emissions may increase. Based on data from equipment vendors and representatives from facilities with more difficult-to-burn raw materials, we believe that future well-designed and operated cement kilns, which will incorporate SCC and low-NO_X burners, will meet a level of 2.5 lb/ton of clinker on average, without consideration of end-of-stack air pollution control. Therefore, we are using this level as the baseline level of control that would occur with no additional regulatory action. However, we know that in some applications the level achieved even when using low-NO_X burners, indirect firing and well-designed SCC may be as high as 3 lb/ton of clinker due to the reasons, such as burnability, discussed above.

We considered choosing as baseline of a new preheater/precalciner kiln designed without SCC or low NO_X burners, i.e., a completely uncontrolled kiln. For a variety of regulatory reasons, the newest kilns based on the most current designs of which we are aware all incorporate low NO_X combustion technologies. Therefore we have no data to determine the appropriate NO_X emission level for a new preheater/precalciner kiln that does not incorporate low-NO_X burners and SCC. In addition, choosing 2.5 lb/ton of clinker as our baseline versus a higher number would not have changed our decision on the proposed NO_X level.

The second emissions level we evaluated was 1.95 lb/ton of clinker, which is the most common level established as BACT in recent permits for new cement kilns.[8] As previously noted, some new kilns meet this level of control using low-NO_X burners and SCC. However, we expect that, on average, new facilities would require only a modest SNCR removal efficiency of 22 percent SNCR to meet this level from the uncontrolled industry average 2.5 lb NO_X/ton of clinker, which is well within the range demonstrated for SNCR control efficiency in this industry.

The third control level we evaluated was 1.5 lb/ton of clinker, and was established based on our assessment of the best demonstrated performance utilizing optimal process design, including SCC, and SNCR taking into account variability of such factors as the burnability of raw material inputs, which can affect NO_X emissions. Data on SNCR show a performance that ranges from approximately 20 to 80 percent NO_X reduction. Since NO_X levels of 1.62 to 1.97 lb/ton of clinker are demonstrated for kilns using well-designed SCC, a level of 1.5 lb/ton of clinker would be easily achievable even with SNCR removal efficiencies in the lower range of demonstrated SNCR performance. Generally, SNCR performance (i.e., percentage removed) increases as uncontrolled NO_X levels increase. For example, SNCR performance in which a reagent was injected into a flue gas at a temperature of 1,800 °F, a 41 percent NO_X removal efficiency was obtained at 70 parts per million (ppm); at 200 ppm the NO_X removal efficiency increased to 54 percent. We estimate that for an SNCR with optimal injection configuration and reagent injection rate, a 50 percent NO_X emission reduction represents a reasonable level of performance of SNCR over the long term. Although, as noted above, we are projecting that new kilns on average will have emissions of 2.5 lb/ton of clinker prior to the application of add-on controls, there may be some situations where specific raw materials properties, such as those affecting burnability, will result in higher uncontrolled NO_X emissions. For this reason we assumed a maximum baseline of 3.0 lb/ton of clinker and 50 percent emission reduction by SNCR to establish a 1.5 lb/ton of clinker control level. And where uncontrolled NO_X emission levels achieved by process design are lower than the assumed maximum baseline of 0.3 lb/ton of clinker, the removal efficiency of SNCR can be lower and still achieve the 1.5 lb/ton of clinker limit. The levels of performance for SNCR are from single test results. By allowing compliance on a 30 day average, we are allowing more operating margin to assure we have accounted for normal operating variability.

The results of this analysis showed that for both the 1.95 and 1.5 lb/ton of clinker levels, the capital costs for the installation are the same, about $2.3 million. Annualized costs for the 1.95 level are $0.7 million and for the 1.5 level, $1.3 million. The annualized cost, including operating and maintenance costs, of control for the 1.5 level is higher than the annualized cost for the 1.95 level because a higher reagent injection rate would be required to reach the lower limit. Overall cost effectiveness at the 1.95 lb/ton of clinker level was approximately $2,000 per ton of NO_X reduction and at the 1.5 lb/ton of clinker level was approximately $2,100 per ton of NO_X reduction. This level of cost effectiveness for both options compares favorably with the reference range of NO_X control cost effectiveness ($200 to $2,800) considered highly cost effective in the Clean Air Interstate Rule. See 70 FR 25208, May 12, 2005. Neither control option results in non-air environmental impacts. The energy impacts due to electrical demand of the SNCR system are not significant. Given the similarity of the cost effectiveness of both options, we are proposing the 1.5 lb/ton of clinker level as BDT.

We also evaluated a control level of 0.5 lb/ton of clinker based on the performance of SCR. SCR is the process of adding ammonia or urea in the presence of a catalyst to selectively reduce NO_X emissions from exhaust gases and has been used extensively on gas turbines, internal combustion engines, and fossil fired-fired utility boilers. The desired chemical reactions are identical with SNCR and SCR. However, SCR uses a catalyst, which allows the reactions to occur at a lower temperature. In SCR systems, ammonia is typically injected to produce an ammonia-to-NO_X ratio of about 1.05 or 1.1 to 1 to achieve a NO_X reduction of 80 to 90 percent with an ammonia slip of 10 ppm. At a cement kiln, SCR can be installed either after the PM control device (a low-dust system) or before the PM control device (a high-dust system).

As noted earlier, three cement kilns have used SCR, all in Europe. Despite the use of SCR on three kilns in Europe, there are several uncertainties as to whether they represent BDT. Of the three kilns in Europe using SCR, two are preheater kilns, and one kiln is a Polysius Lepol technology kiln, which is a traveling grate preheater kiln. None of the kilns using SCR are preheater/

[8] Memorandum from M. Bahner, RTI, to M. Laney, RTI, and K. Barnett, EPA, Review of Three BACT Analyses, October 10, 2007.

precalciner kilns which are the only type of kiln that will be built in the U.S. Also, one of the European cement plants has switched back to using its SNCR system to compare the operational costs of the two systems to evaluate which technology is better and more economical. Because the experience with SCR on cement kilns is so limited, issues have been raised on SCR applicability to cement kilns. Because the optimum operating temperature for most SCR systems is between 600 and 750 °F, the ideal location of the SCR system would be downstream of the preheater cyclones and prior to the roller mill, which is also prior to the PM control device. This location results in the SCR system operating in a high-dust environment. One of the concerns with this location is catalyst plugging and fouling where the accumulation of dust blocks access to the catalyst pores resulting in reduced effectiveness and shortened life span. Because of the problem of catalyst plugging with high-dust SCR systems, a catalyst cleaning mechanism such as pressurized air nozzles or sonic horns is necessary. For more thorough cleaning, it is necessary to periodically remove each individual catalyst bed for cleaning using water or other solvent solutions. The resulting wastewater and solids generated during this cleaning process must be properly managed and disposed (an adverse non-air impact associated with this technology's use). To move exhaust gases past or through the catalyst, there will be an additional pressure drop that may require that existing air-handling equipment, such as fans and blowers, be scaled up. Other concerns include the oxidation of SO_2 to SO_3 by the SCR catalyst, catalyst masking by $CaSO_4$ formation and the generation of sulfuric acid mist, formation of ammonium sulfate which can foul downstream equipment, and alkali poisoning of catalysts and deactivation of catalyst. Eventually, a catalyst will reach the end of its useful life and need to be replaced with new catalyst elements. If not physically damaged, a catalyst can often be regenerated. If not, it must be properly managed and disposed. To avoid the issue of plugging and fouling created by a high dust environment, an SCR can be located downstream of the PM control device as a low-dust system. The disadvantage of a low-dust system is that the SCR system is no longer located in a suitable temperature range and the flue gas must be reheated at a significant cost in order for the injected ammonia to properly react with NO_X in the gas stream. Reheating is typically accomplished using a natural gas burner. While the emissions impact of a gas burner would likely be minimal, the amount of energy use would be in the range of 500 to 600 billion Btu for a 1.2 million tpy kiln. If other less expensive fuels are used (such as coal), then emissions of other pollutants such as PM and SO_2 may increase.

EPA estimates the costs of installing an SCR system to be $5.7 million in capital cost and $3.1 million annualized cost. The resulting average NO_X emissions reduction would be 1,200 tpy over baseline, and the incremental NO_X reduction over the 1.5 lb/ton of clinker control level would be 600 tpy. The average cost effectiveness is approximately $2,500 per ton and the incremental cost effectiveness is approximately $3,000 per ton of NO_X reduction. To determine the reasonableness of this cost effectiveness, we turned to the CAIR rule. Reference cost effectiveness for NO_X controls ranged from $200 to $2,800 and, for marginal cost effectiveness, $1,400 to $3,000. Highly cost effective controls are considered to be those whose cost effectiveness tends toward the lower ends of the reference range. A cost effectiveness of $3,000 for SCR systems on a cement kiln is at or just above the range of average cost effectiveness. It should also be noted that there is considerable uncertainty in the SCR cost estimates due to the technical issues discussed above. If site specific factors relating to the raw materials do cause significant plugging and fouling, the costs calculated above may be biased low. In addition, SCR increases energy use due to the pressure drop across the catalyst, and as noted above, produces liquid and solid wastes that must be managed.

Considering these potential technical operating difficulties with SCR in this industry, somewhat high cost effectiveness, the uncertainty of the costs estimates, and adverse non-air and energy implications, EPA is not proposing SCR as BDT for portland cement kilns. EPA solicits comment on this issue.

We expect that all new kilns will be required to install SNCR systems to meet the 1.5 lb/ton of clinker NO_X limit. One concern with the use of SNCR is the potential for condensable PM emissions. As explained above, under certain conditions the injected ammonia reacts to form condensable fine PM that is not captured by the fabric filter because it is emitted as a gas. We are requesting comments on the effect that ammonia slip from use of SNCR might have in the generation of condensable PM emissions, and what actions, if any, are available to mitigate those impacts.

4. SO_2

In the previous NSPS review, we declined to set SO_2 standards because there were no demonstrated add-on SO_2 control technologies applied to cement kilns (53 FR 50354, December 14, 1988). Since that time at least two SO_2 control technologies have been applied to cement kilns, wet scrubbers and lime injection. The proposed emission limit is based on a review of recent BACT determinations and emissions test data and takes into account the inherent scrubbing ability of the naturally alkaline raw materials used in the cement-manufacturing process (70 FR 72337, December 2, 2005).

In a cement kiln, SO_2 comes from two sources. The first is sulfur in the coal fuel (fuel SO_2). Most fuel SO_2 mixes with lime in the kiln and preheater and is not emitted into the atmosphere. The other and potentially more important source of SO_2 is the raw materials (raw materials SO_2). Sulfides or elemental sulfur in the raw materials may be oxidized to SO_2 in the kiln system where sufficient oxygen is present. Through the inherent scrubbing ability of the alkaline raw materials, this SO_2 is partially removed in the raw mill (50 to 70 percent removal). Raw mills typically operate about 90 percent of the time when the kiln is operating.

For most portland cement plants, the levels of sulfur in raw materials are low enough that most of the SO_2 generated is removed by the natural scrubbing action of the kiln raw feed. However, in those instances where the sulfur content of raw materials is great due to the presence of pyritic sulfur, uncontrolled SO_2 emissions can be significant. Add-on controls may be necessary in those situations.

Cement kilns faced with high SO_2 emissions due to high sulfur levels in raw materials have used either wet scrubbers or lime injection for SO_2 emission control. Wet scrubbers applied to cement kilns typically achieve at least a 90 percent or more reduction in SO_2 emissions.[9] A recently installed scrubber on a cement plant with high uncontrolled SO_2 emissions due to high-sulfur raw materials was designed to achieve a 95 reduction in SO_2 emissions.[10] A 95 percent SO_2 reduction is consistent with other information on the performance of scrubbers for SO_2 removal.[11] Assuming the wet scrubber is correctly sized (typically a liquid-to-gas

[9] Summary of Cement Kiln Wet Scrubber and Lime Injection Design and Performance Data, May 2, 2008.

[10] PSD Application for Lehigh Mason City, 9/02.

[11] Assessment of Control Technology Options for BART-Eligible Sources, March 2005.

ratio of 30 gallons per 1,000 actual cubic feet per minute), the percent removal can vary based on inlet concentration (higher inlet concentrations result in a higher percent reduction) and scrubber pH.

Lime injection consists of injecting lime into a duct downstream of the preheater, or in some cases injecting lime into the first two preheater stages to remove SO_2. At some facilities lime injection is only used when increases on SO_2 emission above a specified level are detected, such as when the raw mill is down. The percent reduction in SO_2 emissions is a function of the inlet SO_2 concentrations and lime injection rates. Increasing either increases the percent reduction in SO_2 emissions. Dry lime systems can reportedly achieve an SO_2 emissions reduction of up to approximately 70 to 75 percent, though one vendor claims potential reductions of up to 90 percent.[12] We evaluated three control options using three levels of uncontrolled SO_2 emissions: low, moderate and high uncontrolled SO_2 emissions. For examples of kilns with low uncontrolled sulfur emissions, we considered kilns operating in the State of Florida. Low uncontrolled sulfur emissions are typical of preheater/precalciner kilns operating in Florida due to the very low amounts of sulfur in most of the available limestone.[13] While making a determination that SO_2 emissions of 0.20 lb/ton of clinker is BACT, Florida State officials expect actual emission levels of 0.01 to 0.05 lb/ton of clinker as a result of the use of these low sulfur raw materials and self scrubbing of fuel SO_2 by finely divided lime in the kiln and calciner.[14]

As noted above, high uncontrolled SO_2 emissions can occur when pyritic sulfur is present in the raw materials and SO_2 emissions are left uncontrolled. Where such cases have occurred, add-on controls have been used to reduce SO_2 emissions. Uncontrolled SO_2 emissions of about 5,000 tpy were reported from a preheater/precalciner kiln where a wet scrubber was recently being added.[15] At a reported production capacity of 800,000 tpy,[16] uncontrolled SO_2 emissions would be about 13 lb/ton of clinker. This is considered representative of a high uncontrolled SO_2 emission level. A moderate uncontrolled SO_2 emission rate of 1.3 lb/ton of clinker was selected and was based on the average of 18 data points for tested NSPS facilities.[17]

All of the SO_2 emission levels discussed above are based on long term average performance, typically 30 days. New cement kilns with SO_2 emission limits typically have continuous SO_2 monitors. In reviewing CEM data we noted that the averaging period affects the achievable SO_2 emission level. Longer averaging periods result in lower average SO_2 levels (since variability tends to be averaged out with multiple measurements over time).

The first control option we considered was no additional control of SO_2 other than the inherent control achieved by the kiln and the raw mill. State BACT determinations usually identify inherent SO_2 removal as BACT (reflecting that most of these kilns are located in areas with low sulfur raw materials). Although many kilns have low sulfur emissions, the obvious deficiency of this option is that some kilns would have moderate or high uncontrolled emissions of SO_2, due to the presence of pyritic sulfur in their raw materials, which emissions would be readily controllable with air pollution control equipment which in fact is usually required in such instances.

The second option considered was 1.33 lb/ton of clinker based on a recent BACT determination level for a kiln where uncontrolled SO_2 emission levels were sufficiently high that an alkaline wet scrubber was installed to reduce SO_2 emissions. This option, and the additional numerical limits discussed below are based on continuous compliance with a 30-day rolling average as measured using an SO_2 continuous emissions monitor. The third option of 0.4 lb/ton of clinker represents the performance of a lime injection system applied to a kiln with a moderate level of sulfur in its raw materials. The fourth level evaluated was 0.2 lb/ton of clinker which was based on the lowest uncontrolled SO_2 permit levels from recent BACT determinations, and represents a level where moderate and high sulfur kilns will require the use of a wet scrubber for SO_2 control. Several kilns in Florida are permitted at this level where very small amounts of sulfur are present in the raw materials.

We are proposing a limit for new kilns of 1.33 lb/ton of clinker, or alternatively, a 90 percent SO_2 emissions reduction measured across the control device, such as an alkaline scrubber.[18] The alternative of 90 percent reduction is to account of situation where the sulfur content of the raw materials is so high that, even with the most efficient SO_2 control, a kiln cannot meet the 1.33 lb/ton of clinker emissions limit. Design and performance data indicate the 90 percent control is continuously achievable for a well designed and operated wet scrubber.[19] Compliance with the 90 percent reduction would be determined by continuously monitoring SO_2 at the control device inlet and outlet. Continuous monitoring of SO_2 at the inlet and outlet is a positive demonstration that the standard is being continuously met.

We estimate that reducing high uncontrolled SO_2 emissions to a level of 1.33 lb/ton of clinker results in a $28 million capital cost, an annual cost of $5 million, and a cost effectiveness of less than $1,000 per ton of SO_2 removal.[20] We consider this level of cost effectiveness to be reasonable as it falls at the lower end of the range of reference cost effectiveness for SO_2 emission controls considered to be ''highly cost effective'' (for purposes of CAA section 110(a)(2)(D) in the CAIR rule). See 70 FR 25204 (May 12, 2005). Under this option, only kilns with moderate or high uncontrolled SO_2 emission levels would likely need to install add-on controls. There are currently only five kilns out of 178 kilns in the U.S. where uncontrolled SO_2 emission levels required the addition of a wet scrubber. We estimate conservatively in costing this option that over the 5-year period following promulgation of these amendments, one out of every five new kilns would have uncontrolled SO_2 emission levels sufficient to warrant the use of a scrubber to reduce SO_2 emissions to the level of 1.33 lb/ton of clinker or, alternatively, demonstrate a 90 percent reduction in SO_2 emissions.

We rejected Options 3 and 4 because they would have resulted in cement kilns with moderate uncontrolled SO_2 emission levels having to apply add-on

[12] Summary of Cement Kiln Wet Scrubber and Lime Injection Design and Performance Data, May 2, 2008.

[13] Technical Evaluation, Preliminary Determination, Draft BACT Determination, Sumter Cement Company. Florida Department of Environmental Protection, December 21, 2005.

[14] Technical Evaluation, Preliminary Determination, Draft BACT Determination, Sumter Cement Company. Florida Department of Environmental Protection, December 21, 2005.

[15] PSD Application for Lehigh Mason City, 9/02.

[16] PCA, U.S. and Canadian Portland Cement Industry, Plant Information Summary, December 31, 2006.

[17] Memorandum, E. Heath, RTI, to J. Wood, EPA:OAQPS:ESD:MICG, April 9, 1996, Summary of impacts of control options on model kilns and clinker coolers. Item no. II–B–67, Docket no. A–92–53.

[18] Section 111(b) specifically indicates that standards may be expressed as numerical limits or as percent reductions.

[19] Summary of Cement Kiln Wet Scrubber and Lime Injection Design and Performance Data, May 29, 2008.

[20] Summary of Environmental and Cost Impacts of Proposed Revisions to Portland Cement New Source Performance Standards, May 29, 2008.

controls, either dry lime sprayers at a cost of approximately $6,000 per ton of SO_2 reduction under Option 3 or a wet scrubber at a cost of approximately $6,700 per ton of SO_2 reduction under Option 4. (see footnote 20) Not only do these options result in a higher cost per ton of SO_2 reduction than Option 2, but Options 3 and 4 would not be likely to achieve any significant additional SO_2 emission reductions over Option 2 for kilns emitting high uncontrolled levels of SO_2 because Option 2 already represents a 90 percent emission reduction control for high sulfur raw materials.

The proposed SO_2 emissions limit of 1.33 lb/ton of clinker should not result in any non-air environmental impacts. Liquid waste from the scrubber can be dewatered and returned to the process. The resulting solids (gypsum) can be added to the clinker to produce cement. In cases where lime injection is used, the lime solids will be mixed in with the collected PM and returned to the process. There will be an energy impact as a result of increased electrical requirements to operate the control devices and, in the case of a wet scrubber, increased energy to operate the induced draft fans to overcome the wet scrubber pressure drop. These increases in energy use will be minimal compared to total kiln electrical energy demands.

Currently only five kilns, or less than 3 percent of all kilns, are using wet scrubbers to control SO_2 emissions. Since most new kilns will undoubtedly be located at existing cement plants where the amount of sulfur in limestone raw materials currently being used is low resulting in low uncontrolled SO_2 emissions, they will likely achieve the proposed standard without the need for add-on air pollution controls. For the few new greenfield kilns that will be built, the presence or absence of pyritic sulfur limestone, which can result in high uncontrolled SO_2 emissions, can be factored into any site selection decisions. The effect of the proposed limit will ensure that the typical performance of BDT control systems today is achieved for future affected kilns in those situations where the presence of pyritic sulfur raw materials would otherwise result in high uncontrolled SO_2 emissions.

5. VOC/CO

We are not proposing to establish limits for CO or volatile organic compound (VOC) emissions from cement kilns. VOC emissions from new cement kilns will mainly result from organics in the raw materials. Organic constituents in the raw materials can be driven off in the kiln preheater prior to reaching temperature zone that would result in combustion. All new cement kilns are currently subject to a continuous 20 parts per million volume (ppmv) total hydrocarbon (THC) emissions limit—THC serving as a surrogate for non-dioxin HAP—by the Portland Cement NESHAP. See 71 FR 76530, December 20, 2006. Because most of the THC are also VOC, the THC limit also limits VOC, and serves as the baseline for the NSPS analysis. This limit is based on the best performance of the regenerative thermal oxidizer add-on control, which is the most effective VOC emission control available for this source category. Therefore we determined that no additional regulation of VOC emissions is feasible.

EPA is currently reconsidering the Portland Cement NESHAP THC limit pursuant to section 307(d)(7)(B) of the CAA. See 71 FR 76553, December 20, 2006. However, based on the information currently available to us, there is no reason to assume that the THC limit after reconsideration will not still represent BDT for this source category.

Emissions of CO can come from two sources, unburned fuel from the precalciner and CO evolved from the raw materials by the same mechanism as the THC emissions. Unburned fuel represents an economic loss to the facility. Therefore, new precalciners are designed to combust fuel as efficiently as possible, and CO emissions from fuel combustion are minimized, regardless of any potential emission limit.

Emissions of CO evolved from raw materials can be significant if there are substantial levels of organics in the raw material. The only control technology identified to reduce CO emissions is a regenerative thermal oxidizer (RTO) (which also would concurrently reduce any VOC emissions, as just discussed). However, as is the case for VOC, facilities with moderate or high levels of organic materials in the feed would emit THC at levels high enough that THC control would be required under the Portland Cement NESHAP. Therefore, the THC limit in the Portland Cement NESHAP also serves as the baseline of the CO analysis. As previously noted, the THC limit is based on the best performance of the regenerative thermal oxidizer add-on control, which is also the most effective CO emission control available for this source category. Therefore we determined that no additional regulation of CO emissions is feasible.

We also noted that in no cases had add-on controls for CO (or VOC) been required as BACT under new source review.

B. How is EPA proposing to amend the testing requirements?

Subpart F currently requires PCP to conduct an initial performance test to demonstrate compliance with the PM emission limits. There is no requirement for repeat performance tests. Under the proposed amendments, new kilns would be required to conduct repeat performance tests every 5 years following the initial performance test, as is done for compliance with the MACT standard for PM for kilns at major sources (64 FR 31903, June 14, 1999), and existing kilns subject to the NSPS would be required to begin testing every five years. We are also requiring existing kilns subject to the NSPS to begin testing every 5 years. We do not see this as a substantive change because the majority of kilns already have a similar testing requirement under the Portland Cement NESHAP, 40 CFR 63, subpart LLL.

There are no NO_X or SO_2 compliance testing requirements; compliance is based on the use of a continuous emissions monitor (see below).

C. How is EPA proposing to amend the monitoring requirements?

We are proposing the use of a bag leak detection (BLD) system on fabric filters used to control PM emissions from new kilns and clinker coolers. We believe the use of BLD systems would be more effective in ensuring ongoing compliance with the PM limit than the current stack opacity limit in the current NSPS. Consequently, affected facilities under this rule would not be subject to an opacity standard to monitor compliance with the proposed PM standard. Bag leak detection systems must be installed and operated according to the proposed § 60.63(f) requirements. If a new facility installs an ESP we are proposing to require use of an ESP predictive model to determine compliance. As with use of a bag leak detector, no opacity standard would apply.

As an option, we are allowing a facility to install a PM CEMS in lieu of using a BDL or using an ESP predictive model. If a facility elects this option, the PM CEMS should be installed and operated in accordance with proposed § 60.63(g).

For existing sources that are currently subject to the NSPS, we are also providing an option to install a BLD to monitor compliance with the PM standard. We are also providing an option for any source subject to the NSPS PM limit to install a PM

continuous monitoring system (PM CEMS). For any source that installs a BLD or PM CEMS, the opacity standard would no longer apply.[21]

For all emission sources other than the kiln and clinker cooler that are subject to the 10 percent opacity standard, we are requiring that they meet the monitoring requirements for these sources contained in the Portland Cement NESHAP, 40 CFR part 63, subpart LLL.

Under the proposed amendments, compliance with the emission limits for NO_X and SO_2 would be determined using continuous emissions monitoring systems (CEMS). This requirement is consistent with recent State permit requirements that require continuous monitoring for NO_X and SO_2. Requirements for the installation, operation, and calibration of each CEM, including minimum data requirements are specified in proposed § 60.63(k) and (l). Kilns meeting the alternative SO_2 emission limit of 90 percent reduction would also be required to continuously monitor SO_2 emissions at the scrubber inlet. The cost impacts shown in the preamble include all monitoring costs. (see footnote 20)

D. Why are we not proposing to revise the other emission limits in the NSPS?

The proposed revisions to the emission limits cover only the cement kiln and clinker cooler. The current NSPS also limits emissions from materials handling operations. These operations are potential emitters of PM, but do not emit other criteria pollutants.

Emissions from materials handling points are typically fugitive emissions, though in some cases emissions are captured and exhausted through a stack. The current opacity limit for these operations is 10 percent. We considered the possibility of setting a lower limit, but we do not have data to indicate that a lower limit is achievable or whether costs associated with a lower opacity limit are reasonable. We currently have no data to indicate that the current level is not what is being achieved in practice. We are requesting comment and any available data addressing capability, if any, to further reduce opacity and, if lower limits are feasible, what the associated costs would be.

E. What other changes are being proposed?

As previously noted, cement kilns are potentially subject to both the NSPS and the Portland Cement NESHAP (40 CFR part 63, subpart LLL). In § 63.1356 of subpart LLL, we exempt any source subject to that subpart from applicable standards under the NSPS and the Metallic Minerals Processing NSPS (subpart OOO). That language was appropriate because the NSPS only regulated PM, and the PM limits in the NSPS and NESHAP were identical. This is no longer the case. As a result, we are proposing to insert language in both the NSPS and the NESHAP to state that when there are emissions standards for a specific pollutant that apply to an affected sources in both the NESHAP and the NSPS, the source should comply with the most stringent limit, and is not subject to the less stringent limit.

F. What is EPA's sector-based approach and how is it relevant to this rulemaking?

In the National Academy of Science's 2004 report, ''Air Quality Management in the United States,'' the National Research Council (NRC) recommended to EPA that standard setting, planning and control strategy development be based on integrated assessments that consider multiple pollutants and those integrated assessments be conducted in a comprehensive and coordinated manner. With these recommendations, EPA began to move towards establishing multi-pollutant and sector-based approaches to managing emissions and air quality. These sector-based approaches essentially expand technical analyses on costs and benefits of particular technologies, and interactions of rules that regulate sources within facilities. The benefit of multi-pollutant and sector-based analyses and approaches include the ability to identify optimum strategies, considering feasibility, costs, and benefits across all pollutant types—criteria, toxics and others—while streamlining administrative and compliance complexities and reducing conflicting and redundant requirements. With these recommendations, EPA's intent is to move toward multi-pollutant and sector-based approaches in managing emissions and air quality. One of the many ways we can address sector-based approaches is by reviewing multiple regulatory programs together when ever possible. This approach should result in added certainty and easier implementation of control strategies for the sector under consideration.

Multiple regulatory requirements currently apply to the cement industry sector. In an effort to facilitate sector-based approaches for the cement industry, EPA analyzed the interactions between the NSPS under review here and other regulatory requirements for portland cement facilities currently under review and/or reconsideration. The requirements analyzed would affect HAP and/or criteria pollutant emissions from cement kilns and comprise the NSPS, NESHAP reconsideration for mercury (Hg) and THC, area source NESHAP, and NESHAP technology review and residual risk. The results of our analyses are described below.

The first interaction is the relationship between the NSPS VOC–CO standard and the NESHAP THC standard discussed above. As explained there, the 20 ppmv THC limit for new sources in the NESHAP will also control VOC and CO to the limit of technical feasibility.

Another interaction relates to the more stringent PM emission limit under NSPS and the PM emissions limit for new sources under the NESHAP. We are proposing a limit of 0.086 lb/ton of clinker as compared to the current new source PM limit in the NESHAP of 0.5 lb/ton of clinker (0.3 lb/ton of feed). This results in a situation where the MACT PM emissions limit for new sources is higher (less stringent) than the NSPS emissions limit. As a result, EPA will consider whether or not we should address the PM standard in the NESHAP as part of the ongoing reconsideration. At a minimum, and as just explained, we are proposing to place language in both the NESHAP and the NSPS making it clear that if a particular source has two different requirements for the same pollutant, they should comply with the most stringent emission limit, and are not subject to the less stringent limit.

The proposed NSPS PM limit also has implications for the PM limit for area sources under the NESHAP. We currently have a requirement to extend the PM limit in the NESHAP to kilns located at area sources in order to meet our requirements to subject to regulation area sources accounting for 90 percent of the emissions of the HAP identified in our Urban Air Toxics Strategy.[22] Having a different limit for kilns under NESHAP and NSPS has implications for the appropriate PM level to apply to new kilns located at area sources under the NESHAP.

Another issue being addressed as part of our cement sector strategy is condensable PM. There are insufficient data to assess if the cement industry is a significant source of condensable PM. The measurement of condensable PM is important to EPA's goal of reducing

[21] Note that we are not proposing to change the requirements in paragraph § 60.63(b). These requirements are in the proposed § 60.63(b)(1)(i) and are reprinted as a convenience to the reader.

[22] Memo from K. Barnett, EPA to Sharon Nizich, EPA. Extension of Portland Cement NESHAP PM limits to Area Sources. May 2008.

ambient air concentrations of fine PM. While the Agency supports reducing condensable PM emissions, the amount of condensable PM captured by Method 5 (the PM compliance test method specified in the NSPS) is small relative to methods that specifically target condensable PM, such as Method 202 (40 CFR part 51, Appendix M). (It should be noted that all of the PM data previously discussed is based on the front half of the Method 5 train, so it does not include any condensable PM). Since promulgation of Method 202 in 1991, EPA has been working to overcome problems associated with the accuracy of Method 202 and will promulgate improvements to the method in the future. In order to assist in future sector strategy development, we are specifically requesting comment on the levels of condensable PM emitted by the cement industry; any condensable PM emission test data collected using EPA Conditional Method 39, EPA Method 202 (40 CFR part 51, Appendix M), or their equivalent, factors affecting those condensable PM emissions, and potential controls.

In addition to the current regulatory efforts, we are required under CAA section 112(f) to evaluate the residual risk for toxic air pollutants emitted by this source category and to perform a technology review for this source category under section 112(d)(6). As we consider any changes in the PM limits under MACT and generally available control technology (GACT), we will also consider the implication these may have in developing future requirements under residual risk and technology review.

Another interaction with implications for the co-control of mercury is the proposed SO_2 standard under the NSPS. As described above, the proposed standard for SO_2 control is 1.33 lb/ton of clinker, or in the alternative, demonstration of a 90 percent SO_2 emissions reduction measured across the control device, such as an alkaline scrubber. Under the NESHAP reconsideration, EPA may amend the MACT standard for Hg for new and existing sources. A facility that is considering adding a new source that may be subject to SO_2 add-on control requirements will have to consider the interaction of their choice of SO_2 and mercury controls. For example, a facility that determines a moderate level of SO_2 reduction would meet the SO_2 emission limit (*i.e.* 70 percent or less) might consider using a lime injection system because it is lower cost. However, if the same facility would have to use some type of add-on control to meet the current new source Hg emission limit of 41 micrograms per dry standard cubic meter (ug/dscm), then the cheapest overall alternative might be to use a wet scrubber for control of both SO_2 and mercury.

In general, we will ensure that our rulemaking recognizes that where monitoring is required, methods and reporting requirements should be consistent in the NSPS and NESHAP where the pollutants and emission sources have similar characteristics. As an example, we are proposing to add a requirement to the NSPS that a PM emissions compliance test on the kiln and clinker cooler be done every five years, as is currently required in the Portland Cement NESHAP for major sources, and we are incorporating the Portland Cement NESHAP monitoring requirements for sources other than kilns and clinker coolers into the NSPS.

In order to better analyze future sector-based approaches for the U.S. cement industry, EPA is developing a dynamic techno-economic model of this industry. Using this model, EPA will be able to analyze emission reduction strategies for multiple pollutants, while taking into account plant-level economic and technical factors such as the type of kiln, associated capacity, location, cost of production, applicable controls and costs. For each of the emission reduction strategies under consideration, the model will be able to provide information on optimal (least cost) industry operation and cost-effective controls, to meet the demand for cement and the emission reduction requirements over the time period of interest. More information on the model can be found in the rulemaking docket.

We welcome comments and suggestions related to the potential uses of our techno-economic model as well in the interaction of this proposed NSPS and other regulatory requirements in the context of the sector-based considerations described above.

G. How is EPA addressing greenhouse gas emissions from the portland cement industry?

While CAA section 111(b)(1)(B) permits EPA, under appropriate circumstances, to add new standards of performance for additional pollutants concurrent with the 8-year review of existing standards, we are not at this time proposing performance standards for greenhouse gases (GHG) from cement kilns. Rather, for the reasons recently explained in the petroleum refineries NSPS final rule signed on April 30, 2008, we believe that it is appropriate to consider issues related to the regulation of GHGs under the CAA through the advance notice of proposed rulemaking announced by the Administrator on March 27, 2008.

V. Summary of Cost, Environmental, Energy, and Economic Impacts of the Proposed Amendments to Subpart F

In setting standards, the CAA requires us to consider alternative emission control approaches, taking into account the estimated costs as well as impacts on energy, solid waste, and other effects. We request comment on whether we have identified the appropriate alternatives and whether the proposed standards adequately take into consideration the incremental effects in terms of emission reductions, energy, and other effects. We will consider the available information in developing the final rule.

We are presenting estimates of the impacts for the proposed amendments to 40 CFR part 60, subpart F that change the performance standards. The cost, environmental, and economic impacts presented in this section are expressed as incremental differences between the impacts of PCP complying with the proposed subpart F revisions and the baseline. The impacts are presented for new PCP affected facilities that commence construction, reconstruction, or modification over the 5 years following promulgation of the revised NSPS. The analyses and the documents referenced below can be found in Docket ID No. EPA–HQ–OAR–2007–0877.

In order to determine the incremental impacts of this proposed rule, we first estimated the number of new kilns that will begin operation over the 5-year period following promulgation of the final amendments. We estimate that 20 new kilns will be subject to the proposed amendments by the end of the 5th year after promulgation of the amendments representing approximately 24 million tpy of clinker capacity. (see footnote 20)

A. What are the air quality impacts?

The proposed PM emission limit represents a lowering of the PM emission limit from 0.5 lb/ton of clinker production to 0.086 lb/ton of clinker. Out review of the performance of recently installed fabric filters indicates that typical new kiln PM emissions are approximately 0.16 lb/ton of clinker rather than 0.5 lb/ton of clinker, the current NSPS limit. We estimate that the PM reduction per kiln as a result of the proposed PM emissions limits will be 44 tpy based on our 1.2 million tpy model kiln, and 888 tpy nationally in the fifth year after promulgation of the standard. We estimate 45 percent (400

tpy) of the estimated PM reduction is PM fine.

Under the proposed limit for NO_X, we have estimated that the emission reduction for our 1.2 million tpy model kiln would be 600 tpy. The projected national emissions reduction 5 years after promulgation of the final standards will be 12,000 tpy.

Under the proposed limit for SO_2, we estimated that a new kiln processing raw materials containing high levels of sulfur would be required to install an alkaline scrubber in order to comply with the proposed limit. For our model kiln, emissions of SO_2 would be reduced by 7,410 tpy where high sulfur raw materials are being processed. We estimated that during the 5 years following promulgation of the final standard, four new kilns are expected to be required to install an alkaline scrubber to meet the proposed SO_2 emission limit. The national emissions reduction 5 years after promulgation of the final standards will be 29,640 tpy. This national emissions reduction may be less than estimated above if some kilns that would have to control SO_2 as a result of this proposed rule are required to apply wet scrubbers as a result of the current mercury emission requirements in the Portland Cement NESHAP (see further discussion in the cost impacts section).

Under the proposed standards, new monitoring requirements would be added. Bag leak detectors would be required on fabric filters used to control new kilns and clinker coolers, and NO_X and SO_2 CEMS would be installed to monitor compliance of new kilns with the new NO_X and SO_2 emission limits. As a result of the shortened duration of excess emissions with the improved monitoring requirements we estimate potential excess emission reductions of 12.38 tpy for PM, 5.57 tpy for $PM_{2.5}$, 108 tpy for NO_X, and 9.36 tpy for SO_2. For further detail on the methodology of these estimates, see Docket ID no. EPA–HQ–OAR–07–0877.

B. What are the water quality impacts?

No water quality impacts for the proposed amendments are anticipated. The requirements for new sources that might result in the use of alkaline scrubber to control SO_2 will produce a scrubber slurry liquid waste stream. However, as noted above, we assume the scrubber slurry produced will be dewatered and added back into the cement-making process as gypsum. Water from the dewatering process will be recycled back to the scrubber.

C. What are the solid waste impacts?

The potential for solid waste impacts are associated with greater PM control for new kilns and solids resulting from solids in scrubber slurry water. Little or no solid waste is expected from the generation of scrubber slurry because (as just explained for the scrubber water) it is assumed that the slurry will be dewatered and the solids added back to the process as gypsum to make cement. The PM captured in the kiln fabric filter (cement kiln dust) is essentially re-captured raw material and is recycled back to the kiln. Where equipped with an alkali bypass, captured PM is typically disposed of as solid waste. An alkali bypass is not required on all kilns. Where one is present, the amount of solid waste generated from the alkali bypass is minimal, usually about 1 percent of total cement kiln dust captured in control devices, because the bypass gas stream is a small percentage of total kiln exhaust gas flow and the bypass gas stream does not contact the feed stream in the raw mill. (see footnote 1)

D. What are the secondary impacts?

Indirect or secondary air quality impacts include impacts that would result from the increased electricity usage associated with the operation of control devices (e.g., increased secondary emissions of criteria pollutants from power plants) as well as water quality and solid waste impacts that would occur as a result of these proposed revisions (which are minimal, as just discussed). We estimate that these proposed revisions would increase emissions of pollutants from utility boilers that supply electricity to the portland cement facilities. We estimate increase energy demand associated with the installation of scrubbers to control SO_2 emissions. These increases are estimated to be 108 tpy of NO_X, 56 tpy of CO, 185 tpy of SO_2 and about 5 tpy of PM at the end of the 5th year after promulgation. The increase in electricity usage for the pumps used in the SNCR system to deliver reagent to the kiln are negligible.

E. What are the energy impacts?

Energy impacts consist of the electricity needed to operate control devices and other equipment that would likely be utilized to comply with the proposed standards. This proposal will likely result in the addition of alkaline scrubbers to certain kilns to reduce SO_2 emissions. We estimate the additional national electrical demand to be 48 million kWhr per year by the end of the 5th year.

F. What are the cost impacts?

Under the proposed amendments, the cost for new kilns are based on the use of NO_X and SO_2 continuous emissions monitors, bag leak detectors, SNCR for NO_X control, and membrane bags in fabric filters. We estimate that four of the twenty new kilns will also need to install a wet scrubber to meet the proposed SO_2 emissions limits (based on our estimates of where the plants will be located and the sulfur content of the limestone in those areas). The total capital cost per kiln is estimated to be $3,900,000 kilns that are not required to install wet scrubbers and $32,000,000 for kilns that are required to install wet scrubbers. The cumulative capital cost in the fifth year is estimated to be $190,000,000. The estimated total annualized cost per new kiln will be $1,500,000 for kilns that do not install wet scrubbers and $6,400,000 for those that do install wet scrubbers. National annualized costs will be $50,000,000.

The national costs shown above are considered to be a conservative estimate because they do not include the potential impact of requirements for new sources in the Portland Cement NESHAP, which limits mercury emission form new kilns to 41 micrograms per dry standard cubic meter (See 71 FR 76518). In this final rule we estimated that seven of the new cement kilns expected in the next five years will need to install a wet scrubber to meet the mercury emissions limit, and we assessed the costs of those scrubbers as part of our analysis of the NESHAP. There are no data to positively determine if the four cement kilns we project here as needing wet scrubbers to meet the proposed SO_2 emissions limit are among the seven kilns we projected as needing wet scrubbers to meet the mercury limit in the NESHAP. However, the available mercury test data for cement kilns that currently have wet scrubbers indicate that all five of these kilns, if they were new sources, would have to apply mercury controls to meet the current mercury limit in the Portland Cement NESHAP. These kilns are also located in areas where the raw materials sulfur content is high enough that, if they were new sources, they would also have to apply controls to meet the proposed NSPS SO_2 emissions limit. Based on this, we believe it is reasonable to assume there will be some overlap, and the national costs for the proposed NSPS, emissions reductions, and energy impacts will be reduced.

We are requesting comment on the size of model kiln used to assess the cost impacts shown above, our growth

estimates, and the control cost estimates, including any appropriate cost credits for replacement of purchased gypsum with synthetic gypsum produced by wet scrubbers.

G. What are the economic impacts?

This proposal affects certain new and reconstructed/ modified affected facilities found at PCP as defined earlier in this preamble. We performed an economic impact analysis that estimates changes in prices and output for portland cement manufacturing nationally using the annual compliance costs estimated for this proposal. All estimates are for the fifth year after promulgation since this is the year for which the compliance cost impacts are estimated.

Existing data on planned capacity expansions suggests 20 new kilns will be constructed in the next 5 years. (see footnote 1) EPA estimates up to four of these kilns may use high sulfur raw materials while the remaining 16 will likely use moderate or low sulfur raw materials.

The engineering cost analysis suggests new kiln using high sulfur raw materials could potentially spend up to $6.4 million dollars per year to meet the selected control options for NO_X, SO_2, and PM (see Table 2 of this preamble). The average cost per ton of capacity is approximately $5. In contrast, new kilns using moderate or low sulfur raw materials could potentially spend $1.5 million dollars per year. The average cost per ton of capacity is approximately $1.

TABLE 2.—MODEL PLANT COSTS

[Clinker Capacity = 1.1 million metric tons per year]

Kiln type	Number of kilns (5-year period)	Total annualized costs ($ million)	New source unit cost ($/metric ton of capacity)
High sulfur raw materials	4	$6.4	$5
Moderate or low sulfur raw materials	16	1.5	1

The USGS reports that the real price of cement per metric ton (2005 dollars) has typically ranged between $75 and $100 since 1990. For high sulfur raw material kilns, this implies a sales test ratio between 5 to 7 percent. For moderate/low sulfur raw material kilns, the sales test ratio is one to two percent. From 2000 to 2006, the Portland Cement Association (PCA, 2007) reports that the average operating profit rates for the industry ranged from 17 to 21 percent. If this profit data is representative of operating profit rates for new kilns, new kilns using high sulfur content raw materials could potentially have significantly reduced operating profits. As a result, companies may have the incentive to look for less expensive alternatives to meet the SO_2 emission standards (e.g. lower sulfur content materials or technologies other than wet scrubbers). Although anecdotal evidence suggests these opportunities exist, EPA does not currently have sufficient information to do a formal evaluation of these alternatives.

We also considered potential market-level changes in prices and consumption for multiple geographic markets anticipating entry of new kilns. The sales tests suggest long run cement price changes could range from one to seven percent, depending on the actual baseline market cement price and the type of kiln entering the market. Applying EPA's econometric estimate of the cement demand elasticity (-0.88) to these price changes, cement consumption could potentially fall between one to six percent.

For more information, please refer to the economic impact analysis report that is in the docket for this proposed rule.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to OMB for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information requirements in the proposed amendments have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2307.01.

The proposed amendments to the NSPS for portland cement plants apply to affected facilities constructed, modified, or reconstructed after June 16, 2008. The owner or operator of a new kiln would be required to keep daily records of clinker production, conduct an initial performance test and repeat performance tests (PM), install and operate bag leak detection systems or PM CEMS for fabric filters used to meet the PM emission limit, and operate NO_X and SO_2 CEMS. These requirements are based on the recordkeeping and reporting requirements in the NSPS General Provisions (40 CFR part 60, subpart A) which are mandatory for all operators subject to new source performance standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 4,428 labor-hours per year at a cost of $416,179 per year. The annualized capital costs are estimated at $59,035 per year and operation and maintenance costs are estimated at $73,852 per year. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2007–0877. Submit any comments related to the ICR for this proposed rule to EPA and OMB.

See **ADDRESSES** section at the beginning of this document for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 16, 2008, a comment to OMB is best assured of having its full effect if OMB receives it by July 16, 2008. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

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 this rule on small entities, small entity is defined as: (1) A small business whose parent company has no more than 750 employees (as defined by Small Business Administration (SBA) size standards); (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 impact of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We estimate that up to 7 of the 44 existing PCP are small entities which would not incur any impacts under these proposed amendments unless an affected facility is constructed, modified, or reconstructed. Based on our economic analysis, 20 new kilns may be constructed during the next five years. One of these kilns may be operated by a PCP that is classified as small entities according to the SBA small business size standards. Of these 20 kilns, this small entity is expected to incur an annualized compliance cost of between 1.0 and 2.0 percent of sales to comply with the proposed action.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities by selection proposed emission level based on highly cost effective controls and specifying monitoring requirements that are the minimum to insure compliance. In the case where there are overlapping standards between this NSPS and the Portland Cement NESHAP, we have exempted source from the least stringent requirement thereby eliminating overlapping monitoring, testing and reporting requirements by proposing that the source comply with only the more stringent of the standards. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 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.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. As discussed earlier in this preamble, the estimated expenditures for the private sector in the fifth year after promulgation are $50 million. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA. In addition, EPA has determined that this proposed action contains no regulatory requirements that might significantly or uniquely affect small governments. This rule contains no requirements that apply to such governments, imposes no obligations upon them, and would not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them. Therefore, this proposed action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' 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. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to this proposed 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 action 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. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The proposed rule imposes requirements on owners and operators of specified industrial facilities and not tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed rule is not likely to have any adverse energy effects. This proposal will result in the addition of alkaline scrubbers to certain kilns to reduce SO_2 emissions. We estimate the additional electrical demand to be 6.9 million kWhr per year by the end of the 5th year.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. EPA proposes to use the VCS ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' for its manual methods of measuring the content of the exhaust gas. These parts of ASME PTC 19.10–1981 are acceptable alternatives to EPA Methods 3B, 6, 6A, 7, and 7C. This standard is available from the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990.

While the Agency has identified 12 other VCS as being potentially applicable to this rule, we have decided not to use these VCS in this rulemaking. The use of these VCS would have been impractical because they do not meet the objectives of the standards cited in this rule. See the docket for this rule for the reasons for these determinations.

Under 40 CFR 60.13(i) of the NSPS General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule and amendments.

EPA welcomes comments on this aspect of this proposed rulemaking and specifically invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (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 the proposed amendments will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they would increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. These proposed standards would reduce emissions of PM, NO_X, and SO_2 from all new, reconstructed, or modified affected facilities at PCP, decreasing the amount of such emissions to which all affected populations are exposed.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Air pollution control.

Dated: May 30, 2008.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart A—[Amended]

2. Section 60.17 is amended by revising paragraph (h)(4) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(h) * * *

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], IBR approved for § 60.63(i)(2) and (i)(4) of subpart F, Tables 1 and 3 of subpart EEEE, Tables 2 and 4 of subpart FFFF, Table 2 of subpart JJJJ, and §§ 60.4415(a)(2) and 60.4415(a)(3) of subpart KKKK of this part.

* * * * *

Subpart F—[Amended]

3. Section 60.62 is amended as follows:

a. Revising the section heading.

b. Revising paragraphs (a)(1) and (a)(2)

c. Adding paragraphs (a)(3) and (a)(4);

d. Revising paragraphs (b)(1) and (b)(2); and

e. Adding paragraph (d) to read as follows:

§ 60.62 Standards.

(a) * * *

(1) Contain particulate matter (PM) in excess of:

(i) 0.15 kg per metric ton of feed (dry basis) to the kiln (0.30 lb per ton) if construction, reconstruction, or modification of the kiln commences after August 17, 1971 but on or before June 16, 2008.

(ii) 0.086 pound per ton of clinker if construction, reconstruction, or modification of the kiln commences after June 16, 2008.

(2) Exhibit greater than 20 percent opacity, except that this opacity limit does not apply to a kiln subject to the PM limit in paragraph (a)(1)(i) of this section that uses a bag leak detection system, ESP predictive model, or a PM continuous emission monitoring system.

(3) Exceed 1.50 pounds of nitrogen oxide (NO_X) per ton of clinker on a 30-day rolling average if construction, reconstruction, or modification of the kiln commences after June 16, 2008.

(4) For sulfur dioxide (SO_2) emissions from a kiln for which construction, reconstruction, or modification commences after June 16, 2008:

(i) Exceed 1.33 pounds per ton of clinker on a 30-day rolling average; or

(ii) The owner or operator must reduce SO_2 emissions exiting the kiln by 90 percent or greater.

(b) * * *

(1) Contain PM in excess of:

(i) 0.050 kg per metric ton of feed (dry basis) to the kiln (0.10 lb per ton) if construction, reconstruction, or modification of the clinker cooler commenced after August 17, 1971 but on or before June 16, 2008.

(ii) 0.086 pound per ton of clinker if construction, reconstruction, or modification of the clinker cooler commences after June 16, 2008.

(2) Exhibit 10 percent opacity, or greater, except that this opacity limit does not apply to a clinker cooler subject to the PM limit in paragraph (b)(1)(i) of this section that uses a bag leak detection system, ESP predictive model or PM continuous emission monitoring system.

* * * * *

(d) If an affected facility subject to this subpart has a different emission limit or requirement for the same pollutant under another regulation in title 40 of this chapter, the owner or operator of the affected facility must comply with the most stringent emission limit or requirement and is not subject to the less stringent requirement.

4. Section 60.63 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b);

c. Revising the first sentence in paragraph (c);

d. Adding paragraphs (f) through (n) to read as follows:

§ 60.63 Monitoring of operations.

(a) The owner or operator of any portland cement plant subject to the provisions of this subpart shall record the daily clinker production rates and kiln feed rates.

(b) The owner or operator of a kiln or clinker cooler must monitor PM emissions according to the applicable requirements in paragraph (b)(1) or (2) of this section.

(1) For a kiln or clinker cooler that that was constructed, reconstructed, or modified after August 17, 1971 but on or before June 16, 2008, the owner or operator must:

(i) Install, calibrate, maintain, and operate in accordance with § 60.13 a continuous opacity monitoring system (COMS) to measure the opacity of emissions discharged into the atmosphere from any kiln or clinker cooler except as provided in paragraph (c) of this section. Each owner or operator of an affected kiln or clinker cooler for which the performance test required under § 60.8 has been completed on or prior to December 14, 1988, must install the COMS within 180 days after December 14, 1988. The COMS must be installed on each stack of any multiple stack control device for emissions from any kiln or clinker cooler. If there is a separate bypass stack installed, the owner or operator also must install, calibrate, maintain, and operate a COMS on each bypass stack in addition to the main control device stack; or

(ii) Install, operate, and maintain a bag leak detection system on each fabric filter used to control PM emissions according to the procedures in paragraph (f) of this section; or

(iii) Install, operate, and maintain an instrument for continuously monitoring and recording the concentration of PM emissions into the atmosphere according to the requirements in paragraph (g) of this section.

(2) For a kiln or clinker cooler that is constructed, modified, or reconstructed or after June 16, 2008, the owner or operator must:

(i) Install, operate, and maintain a bag leak detection system on each fabric filter used to control PM emissions according to the requirements in paragraph (f) of this section; and

(ii) Monitor the performance of any electrostatic precipitator (ESP) used to control PM emissions according to the requirements in paragraph (o) of this section; or

(iii) Install, operate, and maintain an instrument for continuously monitoring and recording the concentration of PM emissions into the atmosphere according to the requirements in paragraph (g) of this section.

(c) Each owner or operator of a kiln or clinker cooler that was constructed, reconstructed, or modified on or before June 16, 2008 using a positive-pressure fabric filter with multiple stacks, or a negative-pressure fabric filter with multiple stacks, or an electrostatic precipitator with multiple stacks may, instead of installing the COMS required by paragraph (b)(1)(i) of this section, monitor visible emissions at least once per day by using a certified visible emissions observer.* * *

* * * * *

(f) The owner or operator must install, operate, and maintain the bag leak detection system according to paragraphs (f) (1) through (3) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (f)(1) (i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per dry standard cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (f)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity

(range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (f)(1)(vi) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (c)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the fabric filter.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (f)(2) (i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (f)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (f)(2)(vi) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective fabric filter compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the PM emissions.

(g) The owner or operator of a kiln or clinker cooler using a PM continuous emission monitoring system (CEMS) to demonstrate compliance with the emission limit in § 60.62 (a) or (b) must install, certify, operate, and maintain the CEMS as specified in paragraphs (g) (1) through (3) of this section.

(1) The owner or operator must conduct a performance evaluation of the PM CEMS according to the applicable requirements of § 60.13, Performance Specification 11 of Appendix B of part 60, and Procedure 2 of Appendix F to part 60.

(2) During each relative accuracy test run of the CEMS required by Performance Specification 11 of Appendix B to part 60, PM and oxygen (or carbon dioxide) data must be collected concurrently (or within a 30- to 60-minute period) during operation of the CEMS and when conducting performance tests using the following test methods:

(i) For PM, Method 5 or 5B of Appendix A–5 to part 60 or Method 17 of Appendix A–6 to part 60.

(ii) For oxygen (or carbon dioxide), Method 3, 3A, or 3B of Appendix A–2 to part 60, as applicable.

(3) Procedure 2 of Appendix F to part 60 for quarterly accuracy determinations and daily calibration drift tests. The owner or operator must perform Relative Response Audit's annually and Response Correlation Audits every 3 years.

(h) The owner or operator of a kiln constructed, modified or reconstructed on or after June 16, 2008 must install, calibrate, maintain and operate a permanent weigh scale system, or use another method approved by the Administrator, to measure and record weight rates in tons-mass per hour of the amount of clinker produced. The system of measuring hourly clinker production must be maintained within ±5 percent accuracy.

(i) Each owner or operator subject to the NO_X emissions limit for a kiln in § 60.62(a)(3) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration by volume of NO_X emissions into the atmosphere.

(j) Each owner or operator subject to the SO_2 emissions limit in § 60.62(a)(4) for a kiln shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration by volume of SO_2 emissions into the atmosphere. If complying with the alternative 90 percent SO_2 emissions reduction emission limit, you must also for continuously monitor and record the concentration by volume of SO_2 emissions at the wet scrubber inlet.

(k) The owner or operator of each CEMS required under paragraphs (i) and (j) of this section, shall install, operate, and maintain each monitoring system according to Performance Specification 2 (40 CFR part 60, appendix B) and the requirements in paragraphs (k) (1) through (5) of this section.

(1) The span value of each NO_X monitor shall be set at 125 percent of the maximum estimated hourly potential NO_X emission concentration that translates to the applicable emission limit at full clinker production capacity.

(2) The owner or operator shall conduct performance evaluations of each NO_X monitor according to the requirements in § 60.13(c) and Performance Specification 2 of Appendix B to part 60. The owner or operator shall use Methods 7, 7A, 7C, 7D, or 7E of appendix A–4 to part 60 for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 7 or 7C of Appendix A–4 to part 60.

(3) The span value for the SO_2 monitor must be set at 125 percent of the maximum estimated hourly potential SO_2 emission concentration that translates to the applicable emission limit at full clinker production capacity.

(4) The owner or operator must conduct performance evaluations of each SO_2 monitor according to the requirements in § 60.13(c) and Performance Specification 2 of Appendix B to part 60. The owner or

operator shall use Methods 6, 6A, or 6C of Appendix A–4 to part 60 for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6 or 6A of Appendix A–4 to part 60.

(5) The owner or operator must comply with the quality assurance requirements in Procedure 1 of Appendix F to part 60 for each monitor, including quarterly accuracy determinations for monitors, and daily calibration drift tests.

(l) The owner or operator of each CEMS required under paragraphs (i) and (j) of this section must operate the monitoring system and record data during all periods of operation of the affected facility including periods of startup, shutdown, malfunction, except for continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments.

(1) The owner or operator must obtain emission data for at least 18 hours in at least 22 out of 30 successive kiln operating days. For each valid hour, the owner or operator also must obtain valid exhaust flow rate data, as specified in paragraph (m)(6) of this section.

(2) The owner or operator must meet the requirements of § 60.13(h) when determining the 1-hour averages of emissions data needed to meet the minimum data requirements specified in paragraph (l)(1) of this section.

(m) Each owner or operator of a kiln subject to the NO_X emissions limit in § 60.62(a)(3) or the SO_2 emissions limit in § 60.62(a)(4)(i) or (ii) must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the exhaust flow rate to the atmosphere according to the requirements in paragraphs (m)(1) through (9) of this section.

(1) The owner or operator must install each sensor of the flow rate monitoring system in a location that provides representative measurement of the exhaust gas flow rate at the sampling location of the NO_X and SO_2 CEMS, taking into account the manufacturer's recommendations.

(2) The flow rate monitoring system must be designed to measure the exhaust flow rate over a range that extends from a value of at least 20 percent less than the lowest expected exhaust flow rate to a value of at least 20 percent greater than the highest expected exhaust flow rate.

(3) The flow rate monitoring system must have a minimum accuracy of 5 percent of the flow rate or greater.

(4) The flow rate monitoring system must be equipped with a data acquisition and recording system that is capable of recording values over the entire range specified in paragraph (l)(2) of this section.

(5) The signal conditioner, wiring, power supply, and data acquisition and recording system for the flow rate monitoring system must be compatible with the output signal of the flow rate sensors used in the monitoring system.

(6) The flow rate monitoring system must be designed to complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, the flow rate monitoring system must measure and record at least three of four equally-spaced data values (or at least 75 percent of the total number of values) for each hour (not including startup, shutdown, malfunction, or out-of-control periods).

(7) The owner or operator must perform an initial calibration of the flow rate monitoring system according to manufacturer's recommendations.

(8) The owner or operator must check the accuracy of the monitoring system at least once per year according to manufacturer's recommendations.

(9) The owner or operator must operate the flow rate monitoring system and record data during all periods of operation of the affected facility including periods of startup, shutdown, malfunction, except for monitoring system breakdowns, repairs, and calibration checks.

(n) You must monitor the performance of any ESP specified in paragraph (b)(2)(ii) of this section in accordance with the requirements in paragraph (o)(1) through (5) of this section.

(1) You must calibrate the ESP predictive model with each PM control device used to comply with the applicable PM emissions limit in § 60.62(a)(ii) or (b)(ii) operating under normal conditions. In cases when a wet scrubber is used in combination with an ESP to comply with the PM emissions limit, the daily average liquid-to-gas flow rate for the wet scrubber must be maintained at 90 percent of average ratio measured during all test run intervals for the performance test conducted according to paragraph (o)(1) of this section.

(2) You must develop a site-specific monitoring plan that includes a description of the ESP predictive model used, the model input parameters, and the procedures and criteria for establishing monitoring parameter baseline levels indicative of compliance with the PM emissions limit. You must submit the site-specific monitoring plan for approval by the permitting authority. For reference purposes in preparing the monitoring plan, see the OAQPS ''Compliance Assurance Monitoring (CAM) Protocol for an Electrostatic Precipitator (ESP) Controlling Particulate Matter (PM) Emissions from a Coal-Fired Boiler.'' This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Sector Policies and Programs Division; Measurement Policy Group (D243–02), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center Continuous Emission Monitoring.

(3) You must run the ESP predictive model using the applicable input data each boiler operating day and evaluate the model output for the preceding boiler operating day excluding periods of affected source startup, shutdown, or malfunction. If the values for one or more of the model parameters exceed the applicable baseline levels determined according to your approved site-specific monitoring plan, you must initiate investigation of the relevant equipment and control systems within 24 hours of the first discovery of a model parameter deviation and take the appropriate corrective action as soon as practicable to adjust control settings or repair equipment to return the model output to within the applicable baseline levels.

(4) You must record the ESP predictive model inputs and outputs and any corrective actions taken. The record of corrective action taken must include the date and time during which the model output values exceeded the applicable baseline levels, and the date, time, and description of the corrective action.

(5) If after 7 consecutive days a model parameter continues to exceed the applicable baseline level, then you must conduct a new PM performance test according to paragraph (o)(1) of this section. This new performance test must be conducted within 60 days of the date that the model parameter was first determined to exceed its baseline level unless a wavier is granted by the permitting authority.

5. Section 60.64 is amended by:

a. Revising paragraph (b) introductory text and paragraph (b)(1); and

b. Adding paragraphs (b)(5) and (b)(6); and

c. Adding paragraph (c).

§ 60.64 Test methods and procedures.

* * * * *

(b) The owner or operator must determine compliance with the PM standard in § 60.62(a)(1) as follows:

(1) The emission rate (E) of PM must be computed for each run using the Equation 1 of this section:

$$E = (c_s Q_{sd}) / (PK) \qquad \text{(Eq. 1)}$$

Where:

E = emission rate of particulate matter, kg/metric ton (lb/ton) of kiln feed;

Cs = concentration of particulate matter, g/dscm (gr/dscf);

Qsd = volumetric flow rate of effluent gas, dscm/hr (dscf/hr);

P = total kiln feed (dry basis) rate, metric ton/hr (ton/hr). For kilns constructed, modified or reconstructed on or after June 16, 2008, p = total kiln clinker production rate; and

K = conversion factor, 1000 g/kg (7000 gr/lb).

* * * * *

(5) The owner or operator of a kiln (including any associated alkali bypass and clinker cooler) that is constructed, modified or reconstructed on or after June 16, 2008, must conduct a performance test every 5 years following the initial performance test. Kilns (including any associated alkali bypass and clinker cooler) constructed, reconstructed, or modified after August 17, 1971, but on or before June 16, 2008, must conduct a performance test every 5 years.

(6) Any sources other than kilns (including associated alkali bypass and cooler) subject to the 10 percent opacity limit must follow the appropriate monitoring procedures in § 63.1350 of this chapter.

(c) The owner or operator must calculate and record the 30-day rolling emission rate of NO_X and SO_2 as the total of all hourly emissions data for a cement kiln in the preceding 30 days, divided by the total tons of clinker produced in that kiln during the same 30-day period using Equation 2 of this section:

$$E = (c_s Q_{sd}) / (PK) \qquad \text{(Eq. 2)}$$

Where:

E = emission rate of NO_X or SO_2, kg/metric ton (lb/ton) of clinker production;

Cs = concentration of NO_X or SO_2, g/dscm (gr/dscf);

Qsd = volumetric flow rate of effluent gas, dscm/hr (dscf/hr);

P = total kiln clinker production rate, metric ton/hr (ton/hr); and

K = conversion factor, 1000 g/kg (7000 gr/lb).

6. Section 60.66 is revised to read as follows:

§ 60.66 Delegation of authority.

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority to a State, local, or tribal agency, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emission standard.

(2) Approval of a major change to test methods under § 60.8(b). A ''major change to test method'' is defined in 40 CFR 63.90.

(3) Approval of a major change to monitoring under § 60.13(i). A ''major change to monitoring'' is defined in 40 CFR 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 60.7(b) through (f). A ''major change to recordkeeping/reporting'' is defined in 40 CFR 63.90.

PART 63—[AMENDED]

7. The authority citation for part 63 continues to read as follows:

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

Subpart LLL—[Amended]

8. Section 63.1356 is revised to read as follows:

§ 63.1356 Sources with multiple emission limits.

If an affected facility subject to this subpart has a different emission limit or requirement for the same pollutant under another regulation in title 40 of this chapter, the owner or operator of the affected facility must comply with the most stringent emission limit or requirement and is exempt from the less stringent requirement.

[FR Doc. E8–12619 Filed 6–13–08; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
June 16, 2008

Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for Refrigerated Bottled or Canned Beverage Vending Machines; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EERE–2006–STD–0125]

RIN 1904–AB58

Energy Conservation Program: Energy Conservation Standards for Refrigerated Bottled or Canned Beverage Vending Machines

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Advance notice of proposed rulemaking and notice of public meeting.

SUMMARY: The Energy Policy and Conservation Act (EPCA) directs the Department of Energy (DOE) to establish energy conservation standards for various consumer products and commercial and industrial equipment, including refrigerated bottled or canned beverage vending machines (beverage vending machines), for which DOE determines that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings. DOE is publishing this Advance Notice of Proposed Rulemaking (ANOPR) to: (1) Announce that it is considering establishment of energy conservation standards for beverage vending machines; and (2) announce a public meeting to receive comments on a variety of related issues.

DATES: DOE will hold a public meeting on Thursday, June 26, 2008, from 9 a.m. to 5 p.m. in Washington, DC. DOE must receive requests to speak at the public meeting no later than 4 p.m., Thursday, June 19, 2008. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting no later than 4 p.m., Thursday, June 19, 2008.

DOE will accept comments, data, and information regarding this ANOPR before or after the public meeting, but no later than July 16, 2008. See Section IV, ''Public Participation,'' of this ANOPR for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585. (Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. If you are a foreign national and wish to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.)

Any comments submitted must identify the ANOPR for Beverage Vending Machines, and provide the docket number EERE–2006–STD–0125 and/or Regulatory Information Number (RIN) 1904–AB58. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: beveragevending.rulemaking@ee.doe.gov.* Include docket number EERE–2006–STD–0125 and/or RIN number 1904–AB58 in the subject line of the message.
- *Postal Mail*: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

For detailed instructions on submitting comments and additional information on the rulemaking process, see Section IV, ''Public Participation,'' of this document.

Docket: For access to the docket to read background documents or comments received, go to the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2192. E-mail: *Charles.Llenza@ee.doe.gov.*

Mr. Eric Stas or Ms. Francine Pinto, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov* or *Francine.Pinto@hq.doe.gov.*

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov.*

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I. Introduction

A. Purpose of the Advance Notice of Proposed Rulemaking

Through this Advance Notice of Proposed Rulemaking, the U.S. Department of Energy is initiating rulemaking to consider establishing energy conservation standards for beverage vending machines. The purpose of this ANOPR is to provide interested persons with an opportunity to comment on:

1. The equipment classes that DOE plans to analyze in this rulemaking;
2. The analytical framework, methodology, inputs, models, and tools (*e.g.*, life-cycle cost (LCC) and national energy savings (NES) spreadsheets) that DOE has been using to perform analyses of the impacts of energy conservation standards for refrigerated bottled or canned beverage vending machines (collectively referred to in this ANOPR as ''beverage vending machines'');
3. The analyses conducted for the ANOPR, including the preliminary results of the engineering analysis, the markups analysis to determine equipment price, the energy use characterization, the LCC and payback period (PBP) analyses, the NES and national impact analyses, and preliminary manufacturer impact analysis. These analyses are summarized in the ANOPR Technical Support Document (TSD), *Energy Efficiency Standards for Commercial and Industrial Equipment: Refrigerated Beverage Vending Machines* [1], published in tandem with this ANOPR; and
4. The candidate standard levels (CSLs) that DOE has developed for the ANOPR from these analyses.

Interested persons are welcome to comment on any relevant issue related to this ANOPR. However, throughout this **Federal Register** notice, DOE identifies areas and issues on which it specifically invites public comment. These critical issues are summarized in Section IV.E of this notice.

B. Overview of the Analyses Performed

As noted above, EPCA, as amended, authorizes DOE to consider establishing or amending energy conservation standards for various consumer products and commercial and industrial equipment, including the beverage vending machines that are the subject of this ANOPR. (42 U.S.C. 6291 *et seq.*) DOE conducted in-depth technical analyses for this ANOPR in the following areas: (1) Engineering; (2) markups to determine equipment price; (3) energy use characterization; (4) LCC and PBP; and (5) NES and net present value (NPV). The ANOPR discusses the methodologies, assumptions, and preliminary results for each analysis.

For each type of analysis, Table I.1 identifies the sections in this document that contain the results of the analyses, and summarizes their methodologies, key inputs, and assumptions. In addition, DOE conducted several other analyses that either support the five analyses discussed above or are preliminary analyses that will be expanded during the notice of proposed rulemaking (NOPR) stage of this rulemaking. These analyses include the market and technology assessment, a screening analysis which contributes to the engineering analysis, and the shipments analysis which contributes to the national impacts analysis. In addition to these analyses, DOE has begun preliminary work on the life-cycle cost subgroup analysis, manufacturer impact analysis, utility impact analysis, employment impact analysis, environmental impact analysis, and the regulatory impact analysis for the ANOPR. These analyses will be expanded upon during the NOPR stage of this rulemaking.

DOE consulted with stakeholders as part of its process in developing all of these analyses for the ANOPR and invites further public input on these topics which it will incorporate, as appropriate, into any revised analyses. While obtaining such input is the primary purpose at this ANOPR stage of the rulemaking, this notice also contains a synopsis of the preliminary analytical results. (The TSD contains a complete set of results.) The purpose of publishing these preliminary results in this notice is to: (1) Facilitate public comment on DOE's analytical methodology; (2) illustrate the level of detail interested persons (stakeholders [2]) will find in the TSD; and (3) invite stakeholders to comment on the structure and the presentation of those results. The preliminary analytical results presented in the ANOPR are subject to revision following review and input from stakeholders.

[1] To view the technical support document for this rulemaking, visit DOE's Web site at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/beverage_machines.html.*

[2] The terms ''stakeholders'' and ''interested persons'' are used interchangeably throughout this ANOPR to refer to any member of the public seeking to provide input on this rulemaking.

TABLE I.1.—IN-DEPTH TECHNICAL ANALYSES CONDUCTED FOR THE ANOPR

Analysis area	Methodology	Key inputs	Key assumptions	ANOPR section for results	TSD section for results
Engineering	Design option analysis.	Component cost data and performance values.	Component performance improvements are estimated using ANSI/ASHRAE Standard 32.1–2004.	Section II.C.6	Chapter 5, section 5.10, and Appendix B.
Markups to Determine Equipment Price.	Assessment of company financial reports to develop markups that transform manufacturer prices into customer prices.	Distribution channels, market shares across the different channels, State sales taxes, and shipments to different States.	Markups for baseline and more-efficient equipment are different.	Section II.D	Chapter 6, section 6.7.
Energy Use Characterization.	Energy use estimates from the energy performance model based on the engineering analysis spreadsheet.	Annual energy consumption based on hourly weather data for 237 U.S. locations.	Vending machines certified for indoor/outdoor use are assumed to be split 25% outdoors and 75% indoors.	Section II.E	Chapter 7, section 7.4.4, and Appendix D.
LCC and Payback Period.	Analysis of a representative sample of commercial customers by business type and location.	Manufacturer selling prices, markups (including sales taxes), installation price, energy consumption, electricity prices and future trends, maintenance costs, repair costs, equipment lifetime, and discount rate.	Baseline efficiency is Level 1. Average electricity prices are listed by customer type and State. The *Annual Energy Outlook 2007 (AEO2007)*[3] is used as the reference case for future trends. Equipment lifetime is 14 years. Discount rate is estimated using the weighted average cost of capital by customer type.	Section II.G.5	Chapter 8, section 8.4, and Appendix G.
Shipments	Projection of total sales by business type, State and by equipment class.	Wholesaler markups from company balance-sheet data, current shipments data by equipment class, and average equipment lifetime.	Market shares by equipment class are constant. Market saturation by business type is constant. Shipments do not change in response to standards.	Section II.H	Chapter 9, section 9.4.

TABLE I.1.—IN-DEPTH TECHNICAL ANALYSES CONDUCTED FOR THE ANOPR—Continued

Analysis area	Methodology	Key inputs	Key assumptions	ANOPR section for results	TSD section for results
National Impact	Forecasts of equipment costs, annual energy consumption, and operating costs to 2042.	Shipments; effective date of standard; base-case efficiencies; shipment-weighted market shares; annual energy consumption, total installed cost, and repair and maintenance costs (all on a per-unit basis); escalation of electricity prices; electricity site-to-source conversion; discount rate; and present year.	Annual shipments are from the shipments model. The annual weighted-average energy efficiency, installed cost, and annual-weighted average repair costs are a function of the energy efficiency level. Annual weighted-average maintenance costs are constant with the energy consumption level. *AEO2007* is used for electricity price escalation, and the National Energy Modeling System (NEMS) is used for site-to-source conversion. Discount rates are 3% and 7% real. Future costs are discounted to 2007.	Section II.I.4	Chapter 10, section 10.4, and Appendix I.

[3] DOE will conduct the NOPR analysis using the latest available version of the AEO. Updated analytical spreadsheets using AEO2008 will be made available on DOE's Web site by late Spring/early Summer 2008: *http://www.eere.energy. gov/buildings/appliance_standards/commercial/beverage_machines.html.*

1. Engineering Analysis

DOE uses the engineering analysis, along with the equipment price determination, to establish the relationship between the costs (i.e., end-user/customer prices) and efficiencies of equipment which DOE evaluates for standards, including beverage vending machines. This relationship serves as the basis for cost and benefit calculations for individual commercial customers, manufacturers, and the Nation. The engineering analysis identifies representative baseline equipment, which is the starting point for analyzing technologies expected to provide energy efficiency improvements. ''Baseline equipment'' here refers to model(s) having features and technologies typically found in equipment currently offered for sale. The baseline model in each equipment class represents the characteristics of equipment in that class; for equipment which is already subject to an energy efficiency standard, the baseline unit is typically one which just meets the current regulatory requirement. After identifying baseline models, DOE estimates manufacturer selling prices (MSPs) through an analysis of manufacturer costs and manufacturer markups. Manufacturer markups are the multipliers used to determine MSPs based on manufacturing cost.

The engineering analysis uses cost-efficiency curves based on a design-options approach [4] derived from DOE analysis. In the engineering analysis, DOE also discusses the equipment classes analyzed, sensitivity to material prices, and the use of alternative refrigerants. For additional detail on the engineering analysis, see Section II.C.1.

2. Markups to Determine Equipment Price

DOE determines customer prices for beverage vending machines from MSP [5] and equipment price markups using industry balance sheet and U.S. Census Bureau data. To determine price markups, DOE identifies distribution channels for equipment sales and determines the existence and amount of markups within each distribution channel. For each distribution channel, DOE distinguishes between ''baseline markups'' applied to the MSP for baseline equipment and ''incremental markups'' applied to the incremental increase in MSP for more-efficient equipment. Overall baseline and overall incremental markups are calculated separately based on the product of all baseline and incremental markups at each step in a distribution channel. Together, the overall baseline markup applied to the baseline equipment MSP and the incremental markups applied to the incremental increase in MSP for more-efficient equipment, including sales tax, determine the final customer price. For additional detail on the markups used to determine equipment price, see Section II.D.

3. Energy Use Characterization

The energy use characterization provides estimates of annual energy consumption for beverage vending machines. DOE uses these estimates in the subsequent LCC and PBP analyses and the national impact analysis (NIA). DOE developed daily energy consumption estimates for the different equipment classes analyzed in the

[4] A design-options approach uses individual or combinations of design options to identify increases in efficiency. Under this approach, estimates are based on manufacturer or component supplier data, or through the use of engineering computer simulation models. Individual design options, or combinations of design options, are added to the baseline model in ascending order of cost-effectiveness.

[5] Manufacturer selling prices are derived from the manufacturer production costs by applying the manufacturer markup. The MSP is the selling price of the equipment directly from the manufacturing facility. If this equipment is then routed through a wholesaler and/or a distributor, additional markups are applied before reaching the customer.

engineering analysis.[6] DOE then validated these estimates with simulation modeling of energy consumption on an annual basis for all the equipment classes and efficiency levels. The simulation modeling took into account the percentage of vending machines that would be placed indoors and outdoors and therefore, exposed to varying ambient temperatures. For additional detail on the energy use characterization, see Section II.E.

4. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual commercial customers. The LCC is the total customer expense for a piece of equipment over the life of the equipment (i.e., purchase price plus maintenance and operating costs). The LCC analysis compares the life-cycle costs of equipment designed to meet new or amended energy conservation standards with the life-cycle cost of the equipment likely to be installed in the absence of such standards. DOE determines these costs by considering: (1) Total installed cost to the purchaser (including MSP, sales taxes, distribution channel markups, and installation cost); (2) the operating expenses of the equipment (energy cost and maintenance and repair cost); (3) equipment lifetime; and (4) a discount rate that reflects the real cost of capital and puts the LCC in present value terms. For additional detail on the LCC analysis, see Section II.G.1.

The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of more-efficient equipment through savings in the operating cost. The PBP is the increase in total installed cost due to increased efficiency divided by the (undiscounted) decrease in annual operating cost from increased efficiency. For additional detail on the PBP analysis, see Section II.G.1.

5. National Impact Analysis

The NIA estimates the NES, as well as the NPV, of total national customer costs and savings expected to result from new standards at specific efficiency levels. Stated another way, DOE calculated the NES and NPV for each standard level for beverage vending machines as the difference between a base-case forecast (i.e., without new standards) and the standards-case forecast (i.e., with new standards). For each year of the analysis, the beverage vending machine stock is composed of units of different types shipped in previous years (or vintages) which remain available for sale at present. Each vintage has a characteristic distribution of efficiency levels. DOE first determined the average energy consumption of each vintage in the stock accounting for all efficiency levels in that vintage. The national annual energy consumption is then the product of the annual average energy consumption per beverage vending machine at a given vintage and the number of beverage vending machines of that vintage in the stock for the particular year. This approach accounts for differences in unit energy consumption from year to year. Annual energy savings are calculated for each standard level by subtracting national energy consumption for that standard level from that calculated for the baseline. Cumulative energy savings are the sum of the annual NES determined from 2012 to 2042.

In a similar fashion, DOE tracks the first costs for all equipment installed at each efficiency level for each vintage. It also tracks the annual operating cost (sum of the energy, maintenance, and repair costs) by vintage for all equipment remaining in the stock for each year of the analysis. DOE then calculates the net economic savings each year as the difference between total operating cost savings and increases in the total installed costs. The NPV is the annual net cost savings calculated for each year, discounted to the year 2012, and expressed in 2007$. Cumulative NPV savings reported are the sum of the annual NPV savings over the analysis period (2012–2042).[7] Critical inputs to the NIA include shipment projections, rates at which users retire equipment (based on estimated equipment lifetimes), and estimates of changes in shipments and retirement rates in response to changes in equipment costs due to new standards. For additional detail on the NIA, see Section II.I.1.

C. Authority

Title III of EPCA sets forth a variety of provisions concerning energy efficiency. Part A[8] of Title III provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309)

The amendments to EPCA contained in the Energy Policy Act of 2005 (EPACT 2005), Pub. L. 109–58, include new or amended energy conservation standards and test procedures for some of these products, and direct DOE to undertake rulemakings to promulgate such requirements. In particular, section 135(c)(4) of EPACT 2005 amends EPCA to direct DOE to prescribe energy conservation standards for beverage vending machines. (42 U.S.C. 6295(v))

Because of its placement in Part A of Title III of EPCA, the rulemaking for beverage vending machine energy conservation standards is bound by the requirements of 42 U.S.C. 6295. However, since beverage vending machines are commercial equipment and consistent with DOE's previous action to incorporate the EPACT 2005 requirements for commercial equipment into Title 10 of the Code of Federal Regulations (CFR), Part 431 (''Energy Efficiency Program for Certain Commercial and Industrial Equipment''), DOE intends to place the new requirements for beverage vending machines in 10 CFR part 431. The location of the provisions within the CFR does not affect either their substance or applicable procedure, so DOE is placing them in the appropriate CFR part based on their nature or type.[9]

Before DOE prescribes any such standards, however, it must first solicit comments on proposed standards. Moreover, DOE must design each new standard for beverage vending machines to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified, and will result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A), (o)(3), (v)) To determine whether a standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, considering the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared with any increase in the price, initial charges, or

[6] The daily energy consumption estimates were calculated in the engineering analysis based on procedures and conditions specified in ANSI/ASHRAE Standard 32.1–2004, *Methods of Testing for Bottled, Canned, and Other Sealed Beverages.*

[7] DOE uses 31 years as the time period of analysis for its NES calculations in many of its rulemakings, in order to enable interested persons to understand the relative magnitude of energy savings potentials of the various equipment at the standard levels being considered.

[8] This part was originally titled Part B; however, it was redesignated Part A, after Part B of Title III was repealed by Pub. L. 109–58. Similarly, Part C, *Certain Industrial Equipment*, was redesignated Part A–1.

[9] Because of their placement into 10 CFR 431, beverage vending machines will be referred to as ''equipment'' throughout this notice.

maintenance expenses for the covered product likely to result from imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from imposition of the standard;

(4) Any lessening of the utility or performance of the covered products likely to result from imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary of Energy (the Secretary) considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i))

D. Background

1. History of Standards Rulemaking for Beverage Vending Machines

As noted above, section 135(c)(4) of EPACT 2005 amended section 325 of EPCA in part by adding new subsections 325(v)(2), (3), and (4). (42 U.S.C. 6295(v)(1), (2) and (3)).[10] These provisions direct the Secretary to prescribe, by rule, energy conservation standards for beverage vending machines no later than August 8, 2009, and state that any such standards shall apply to beverage vending machines manufactured three years after the date of publication of the final rule that establishes those standards. The energy use of this equipment has never before been regulated at the Federal level.

Section 135(a)(3) of EPACT 2005 amended section 321 of EPCA in part by adding new subsection 321(40) (42 U.S.C. 6291(40)), which establishes the definitions for ''refrigerated bottled or canned beverage vending machine'' as ''a commercial refrigerator that cools bottled or canned beverages and dispenses the bottled or canned beverages on payment.'' In addition, section 136(a)(3) of EPACT 2005 amended section 340 of EPCA in part by adding a definition for ''commercial refrigerator, freezer, and refrigerator-freezer.''[11]

On June 28, 2006, DOE published in the **Federal Register** a notice announcing a public meeting and the availability of a Framework Document titled, *Rulemaking Framework for Refrigerated Bottled or Canned Beverage Vending Machines*,[12] that describes the procedural and analytical approaches that DOE anticipates using to evaluate energy conservation standards for beverage vending machines. 71 FR 36715. DOE invited written comments on this analytical framework.

DOE held a Framework public meeting on July 11, 2006, whose purpose was to discuss the procedural and analytical approaches for use in the rulemaking, and to inform and facilitate stakeholder involvement in the rulemaking process. The analytical framework presented at the public meeting described different analyses, such as LCC and PBP, the planned methods for conducting them, and the relationships among the various analyses.[13] Manufacturers, trade associations, environmental advocates, and other interested parties attended the public meeting.

Comments received after publication of the Framework Document and at the July 11 public meeting helped identify and elaborated upon issues involved in this rulemaking and provided information that has contributed to DOE's efforts to resolve these issues. Many of the statements provided by stakeholders are quoted or summarized in this ANOPR. A parenthetical reference at the end of a quotation or passage provides the location of such item in the public record (*i.e.*, the docket for this rulemaking). The ANOPR TSD describes the analytical framework in detail.

During the course of this rulemaking, Congress passed the Energy Independence Security Act of 2007 (EISA 2007), which the President signed on December 19, 2007 (Pub. L. 110–140). Of relevance to the beverage vending machine rulemaking, section 310(3) of EISA 2007 amended section 325 of EPCA in part by adding subsection 325(gg) (42 U.S.C. 6295(gg)). This subsection requires any new or amended energy conservation standard adopted after July 1, 2010 to incorporate ''standby mode and off mode energy use.'' (42 U.S.C. 6295(gg)(3)(A)) Since any standard associated with this rulemaking is required by August 2009, the energy use calculations will not include ''standby mode and off mode energy use.'' To include standby mode and off mode energy use requirements for this rulemaking would take a considerable degree of analytical effort and would likely require changes to the test procedure. Given the statutory deadline, DOE has decided to address this requirement when the standards for beverage vending machines are reviewed in August 2015 to consider the need for possible amendment in accordance with 42 U.S.C. 6295(m).

2. Rulemaking Process

Table I.2 sets forth a list of the analyses DOE has conducted and intends to conduct in its evaluation of potential energy conservation standards for beverage vending machines. Historically, DOE performed the manufacturer impact analysis (MIA) in its entirety between the ANOPR and NOPR stages of energy conservation standards rulemakings. However, more recently, DOE has refined its process and has begun to publish a preliminary MIA in the ANOPR for public comment. DOE believes this change will improve the rulemaking process. Accordingly, as noted in the table below, DOE has performed a preliminary MIA for this ANOPR.

TABLE I.2.—BEVERAGE VENDING MACHINE ANALYSIS

ANOPR	NOPR	Final Rule*
• Market and technology assessment • Screening analysis	• Revised ANOPR analyses • Life-cycle cost sub-group analysis	• Revised NOPR analyses

[10] It is noted that the relevant statutory provisions were renumbered pursuant to section 316 of the Energy Independence and Security Act of 2007, Pub. L. 110–140.

[11] This definition reads as follows:

''(9)(A) The term 'commercial refrigerator, freezer, and refrigerator-freezer' means refrigeration equipment that—

(i) is not a consumer product (as defined in section 321 [of EPCA; 42 U.S.C. 6291(1)]);

(ii) is not designed and marketed exclusively for medical, scientific, or research purposes;

(iii) operates at a chilled, frozen, combination chilled and frozen, or variable temperature;

(iv) displays or stores merchandise and other perishable materials horizontally, semivertically, or vertically;

(v) has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors;

(vi) is designed for pull-down temperature applications or holding temperature applications; and

(vii) is connected to a self-contained condensing unit or to a remote condensing unit.''

(42 U.S.C. 6311(9)(A))

[12] The Framework Document is available at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/beverage_machines.html.*

[13] PDF copies of the slides and other materials associated with the public meeting are available at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/beverage_machines.html.*

TABLE I.2.—BEVERAGE VENDING MACHINE ANALYSIS—Continued

ANOPR	NOPR	Final Rule*
• Engineering analysis • Energy use characterization • Markups to determine equipment price • Life-cycle cost and payback period analyses • Shipments analysis • National impact analysis • Preliminary manufacturer impact analysis	• Manufacturer impact analysis • Utility impact analysis • Employment impact analysis • Environmental assessment • Regulatory impact analysis	

* During the final rule phase, DOE considers the comments submitted by the U.S. Department of Justice in the NOPR phase concerning the impact of any lessening of competition likely to result from the imposition of the standard. (42 U.S.C. 6295(o)(2)(B)(v))

The analyses listed in Table I.2 also include the development of related economic models and analytical tools, as necessary. If timely new data, models, or tools that enhance the development of standards become available, DOE will incorporate them into this rulemaking.

3. Miscellaneous Rulemaking Issues

a. Consensus Agreement

In response to the Framework Document, USA Technologies stated that there appears to be considerable consensus regarding potential energy conservation standards for beverage vending machines and that DOE could provide a valuable and meaningful service by coordinating the efforts of industry, manufacturers, beverage vending machine owners, and utilities by fostering an agreement on standards. USA Technologies stated that this approach could help the industry achieve significant energy savings in a very short time, instead of waiting until 2012. (USA Tech, No. 9 at p. 1) [14] Edison Electric Institute (EEI) suggested that, given DOE's workload on Federal standards over the next several years, DOE should try to arrange a negotiated rulemaking of interested parties to help streamline the process. EEI noted that such a process was very successful with the fluorescent lamp ballast rulemaking.[15] (EEI, No. 12 at p. 1)

DOE supports efforts by interested parties to work together to develop and present to DOE recommendations on equipment categories and standard levels. Such recommendations are welcome throughout the standards development process, especially following issuance of the ANOPR. Any consensus recommendation must satisfy the statutory criteria provided by EPCA in determining whether an energy conservation standard is technologically feasible and economically justified, and will result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A), (o)(3), (v)) Any consensus recommendation should also include information that DOE can use to assess the seven statutory factors that determine whether the benefits of the standard exceed its burdens to the greatest extent practicable. (42 U.S.C. 6925(o)(2)(B)(i))

b. Type of Standard

Crane Merchandising Systems asked whether the technology options listed would become mandatory as part of the rulemaking. (Public Meeting Transcript, No. 8 at p. 150) USA Technologies stated that, in terms of technology options for compliance with energy conservation standards, the more opportunity manufacturers have to be creative, the better, particularly since this is a very creative industry. It stated that restricting manufacturers to particular design options would not be in the manufacturers'—or the buyers'—best interest. (Public Meeting Transcript, No. 8 at p. 173) Dixie-Narco likewise stated that the choice of technologies used to achieve standards should be left to the discretion of the manufacturer. (Public Meeting Transcript, No. 14 at p. 3) Dixie-Narco further suggested that the DOE standard should not recommend any particular design packages or endorse any specific third-party technologies developed for use in vending machines that original equipment manufacturers have not endorsed as being compatible with their equipment. It stated that these technologies may work against other energy-saving components such as variable-capacity compressors. (Public Meeting Transcript, No. 14 at p. 3) In contrast, the Naval Facilities Engineering Service Center (NFESC) recommended that DOE should pursue cost-effective standards for beverage vending machines, which would include both overall efficiency standards, as well as prescriptive standards that address more focused topics such as a low-power-mode requirement for low-use periods and lighting efficiency within the unit. (NFESC, No. 15 at p. 2)

In response, DOE notes that EPCA provides that an ''energy conservation standard'' must be either (A) ''a * * * level of energy efficiency'' or ''a * * * quantity of energy use,'' or (B), for certain specified equipment, ''a design requirement.'' (42 U.S.C. 6291(6)) Thus, an ''energy conservation standard'' cannot consist of both a design requirement and a level of efficiency or energy use.[16] Moreover, item (A) above indicates that, under EPCA, a single energy conservation standard cannot have measures of both energy efficiency and energy use. Furthermore, EPCA specifically requires DOE to base its test procedure for this equipment on American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 32.1–2004, *Methods of Testing for Rating Vending Machines for Bottled, Canned or Other Sealed Beverages.* (42 U.S.C. 6293(b)(15)) The test methods in ANSI/ASHRAE Standard 32.1–2004 consist of means to measure energy consumption, not energy efficiency.

For these reasons, DOE does not intend to develop efficiency standards or design requirements for this equipment. Instead, DOE intends to develop standards such that each beverage vending machine would be subject to a maximum level of energy

[14] A notation in the form ''USA Tech, No. 9 at p. 1'' identifies a written comment that DOE received and included in the docket for this rulemaking (Docket No. EERE–2006-STD–0125), maintained in the Resource Room of the Building Technologies Program. Specifically, this footnote refers to a comment made USA Technologies, and recorded on page 1 of document number 9. Likewise, a notation in the form ''Public Meeting Transcript, No. 8 at p. 150'' identifies an oral comment that DOE received during the July 11, 2006, Framework public meeting and which was recorded in the public meeting transcript in the docket for this rulemaking. Likewise, a notation in the form ''Joint Comment,'' No. 13 at p. 3'' identifies a written comment that DOE has received and has included in the docket of this rulemaking.

[15] DOE notes that in the florescent lamp ballasts rulemaking, a consensus process was used. 65 FR 56740, 56744 (Sept. 19, 2000).

[16] Beverage vending machines are not one of the specified equipment for which EPCA allows a standard to consist of a design requirement. (42 U.S.C. 6291(6)(B), 6292(a)).

use, and manufacturers could meet these standards with their own choice of design methods.

c. Split Incentive Issue

DOE mentioned the ''split incentive issue'' (explained below) at the Framework public meeting when discussing distribution channels for beverage vending machines sold to the bottler or a vending machine operator. The bottler or the vending machine operator installs these machines at different sites through location contracts, maintains and stocks the machines, and retains a certain percentage of the coin-box revenue. The site owner, in this case, allows the machine to be placed on-site, receives a percentage of the coin-box revenue and/or other remuneration, and most relevant to this rulemaking, pays the electricity bill and enjoys any electricity cost savings associated with more-efficient machines. The equipment purchaser (bottler or vending machine operator) does not pay the electricity bill and, therefore, does not receive any cost savings. In principle, the business site owner would be willing to accept a lower percentage of revenue for a machine that uses less electricity. However, where it is costly to renegotiate contracts, the incentive to purchase more-efficient machines may be lessened or eliminated. Nonetheless, there may be a growing market for energy-efficient beverage vending machines because environmentally-conscious beverage companies and bottlers are pushing to install energy-efficient machines on-site, and certain site owners are demanding that energy-efficient machines be installed to reduce their electricity costs.

At the Framework public meeting, Coca-Cola indicated that the vending machine operator may or may not pay some or all of the energy costs, depending on its contract with the site owner. (Public Meeting Transcript, No. 8 at p. 190) Meanwhile, EEI asserted that information about distribution channels and beverage vending machine contracts would be important for the LCC analysis. EEI claimed that unless there is a provision in the contract for energy costs, there will be a split incentive for machine owners and site owners. (EEI, No. 12 at p. 5)

DOE agrees with EEI that there may be a split incentive in the beverage vending machine market; however, it disagrees with EEI's contention that the split incentive is relevant to the LCC analysis. DOE recognizes that when a standard results in overall operating cost savings that are greater than increases in the installed cost for the equipment, there will be a life-cycle cost benefit from the standard, a key piece of regulatory information independent of who receives such benefit. How the benefits and burdens are shared between the equipment purchaser and the site owner is a function of the nature of the contract, and this allocation may in fact change as the expenses of either party change as a result of subsequent events, such as changes in electricity prices or standards requiring more-efficient machines. DOE has limited data on existing beverage vending machine contracts, but knows that these can vary widely. DOE has no data on how these contracts may change as the relative expenses of either party shift. In summary, for the purposes of the LCC analysis and as is required by EPCA, DOE is evaluating the benefits and burdens of the standards from the standpoint of a ''customer'' who is assumed to bear the burden of purchasing the equipment and the benefits of any energy savings, which in this case, is the equipment purchaser. (42 U.S.C. 6295(o)(2)(B)(i)) DOE requests further comment and information on this issue.

4. Test Procedure

A test procedure outlines the method by which manufacturers will determine the energy consumption of their beverage vending machines, and thereby assess the results used to certify compliance with an energy conservation standard.

Section 135(b) of EPACT 2005 amended section 323 of EPCA in part by adding new subsections 323(b)(15) (42 U.S.C. 6293(b)(15)) and 323(f) (42 U.S.C. 6293(f)). Respectively, these subsections provide that the test procedure for refrigerated bottled or canned beverage vending machines shall be based on ANSI/ASHRAE Standard 32.1–2004, and that the Secretary had until August 8, 2007 to prescribe that new test procedure.

On December 8, 2006, DOE published a final rule in the **Federal Register** that incorporated by reference ANSI/ASHRAE Standard 32.1–2004, with two modifications, as the DOE test procedure for this equipment. 71 FR 71340, 71375; 10 CFR 431.294. The first modification DOE made was to specify that in Section 6.2, ''Voltage and Frequency,'' equipment with dual nameplate voltages must be tested at the lower of the two voltages only. 71 FR 71340, 71355 (Dec. 8, 2006). The second modification was to specify that (1) any measurement of ''vendible capacity'' of refrigerated bottled or canned beverage vending machines must be in accordance with the second paragraph of Section 5, ''Vending Machine Capacity,'' of ANSI/ASHRAE Standard 32.1–2004, and (2) any measurement of ''refrigerated volume'' of refrigerated bottled or canned beverage vending machines must be in accordance with the methodology specified in Section 5.2, ''Total Refrigerated Volume,'' (excluding subsections 5.2.2.2 through 5.2.2.4) of the ANSI/Association of Home Appliance Manufacturers (AHAM) HRF–1–2004, *Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers. Id.*

5. Rating Conditions

In the Framework Document, DOE requested feedback on what rating conditions it should use for setting standards and determining compliance with them. DOE's test procedure included two rating conditions (i.e., 75 degrees Fahrenheit (°F)/45 percent relative humidity (RH) and 90°F/65 percent RH). EEI stated that the 75°F/45 percent RH ambient conditions specified in the ANSI/ASHRAE Standard 32.1–2004 should provide adequate daily energy-usage information for most machines located solely indoors. EEI added that for certain indoor conditions (i.e., machines located in rooms with limited ventilation), the 90°F/65 percent RH test conditions may be better. (EEI, No. 12 at p. 2)

Dixie-Narco stated that for the majority of indoor equipment, the rating 75°F/45 percent RH temperature is accurate and reflects actual conditions. (Public Meeting Transcript, No. 8 at p. 95) Dixie-Narco stated that the 90°F/65 percent RH rating condition is highly overstated, arguing that no location in the United States is at 90°F/65 percent RH condition 24 hours a day, 365 days a year. Royal Vendors and UVA Technologies agreed with Dixie-Narco, stating that the actual energy use of outdoor machines is likely to be overstated, in most cases, when determined under those conditions. (Public Meeting Transcript, No. 8 at pp. 96–97)

Pacific Gas and Electric (PG&E) indicated, however, that DOE need not distinguish between indoor and outdoor temperature conditions in setting rating conditions because machines located indoors sometimes operate in warmer conditions, similar to the ambient conditions that the machine might operate in if it was located outdoors. (Public Meeting Transcript, No. 8 at p. 94) Coca-Cola stated energy consumption depends not only on ambient temperature, but also on ambient humidity and the heat load

(heat output by components) within the machine. (Coca-Cola, No. 8 at p. 220) EEI noted that one EEI member company suggested that if DOE could determine a way to require outdoor-rated machines to be used exclusively outdoors and indoor-rated machines to be used exclusively indoors, there could be considerable energy savings. (EEI, No. 12 at p. 2)

During the Framework public meeting, EEI stated that if glass-front machines are placed outside, DOE might need to consider a different test procedure to account for the difference in radiation heat loads between glass-front and closed-front machines. EEI also suggested separate tests for winter and summer conditions for machines used outdoors. (Public Meeting Transcript, No. 8 at p. 66) In addition, EEI argued that energy usage of beverage vending machines varies dramatically based on ambient conditions. It suggested that DOE should adopt a test procedure for outdoor machines that would account for high ambient temperatures and/or solar loads, which would improve the efficiency of the equipment throughout the year, but especially on peak summer days. (EEI, No. 12 at p. 3) EEI added that if DOE decides to establish standards in terms of total daily energy consumption, then extreme outdoor temperature conditions must be accounted for. (EEI, No. 12 at p. 5)

In response to these comments, DOE understands the concerns about the variability in energy consumption resulting from different ambient conditions. However, outdoor-only beverage machines are currently nonexistent. Currently, all machines placed outdoors are designed for both indoor and outdoor use and are not designed exclusively for outdoor use only. If, as suggested by several manufacturers, a 90 °F/65 percent RH rating condition for a machine used outdoors would result in overstatement of its energy use due to changing daily and seasonal ambient conditions, that rating condition applied to the same machine used indoors would then be expected to result in an even greater overstatement of energy use. For example, the average annual temperature in Miami, FL (one of the southernmost and warmest cities in the United States) is approximately 75 °F.[17] Therefore, throughout the United States, almost all average annual outdoor temperatures are close to or below 75 °F. DOE chooses to evaluate an average temperature because it believes that the increase in the energy consumption of a machine operating in temperatures above the average is offset by the decrease in energy consumption of a machine operating in temperatures below the average. In addition, beverage vending machines have closed refrigeration systems. The relative humidity that a beverage vending machine operates in has a much less significant impact than ambient temperature on the energy consumption of a beverage vending machine. After careful consideration of public comments on this issue, DOE plans to use a 75 °F/45 percent RH rating condition for all refrigerated beverage vending machines covered by this rulemaking. DOE will include this rating condition requirement as part of any energy conservation standards developed in this rulemaking.

II. Energy Conservation Standards Analyses for Beverage Vending Machines

This section addresses the analyses DOE has performed and intends to perform for this rulemaking. A separate subsection addresses each analysis and the underlying assumptions applied to that analysis. Specifically, DOE will perform a set of analyses, including: (1) A market and technology assessment; (2) a screening analysis; (3) an engineering analysis; (4) an analysis to determine equipment price; (5) an energy use characterization; (6) an LCC and PBP analysis; (7) a shipments analysis; (8) a national impact analysis; and (9) a manufacturer impact analysis. Additional analyses consider the impact of a potential rule on utilities, LCC sub-groups, employment, and the environment. A full description of how these analyses are performed is contained in the TSD.[18] However, this section of the ANOPR provides an overview of these analyses, while focusing on how these analyses are being tailored to this rulemaking and on their underlying assumptions. It also discusses comments received from interested parties since DOE published the beverage vending machines Framework Document.

A. Market and Technology Assessment

When DOE begins a standards rulemaking, it develops market assessment information that provides an overall picture of the market for the equipment concerned, including the nature of the equipment, the industry structure, and market characteristics for the equipment. The technology assessment identifies available, energy-saving technologies, which will be considered in the screening analysis. These activities consist of both quantitative and qualitative efforts based primarily on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking include manufacturer characteristics and market shares, existing regulatory and non-regulatory efficiency improvement initiatives, equipment classes, and trends in equipment markets and characteristics. This information serves as resource material for use throughout the rulemaking.

1. Definition of ''Beverage Vending Machine''

As mentioned above, EPCA defines the term ''refrigerated bottled or canned beverage vending machine'' as ''a commercial refrigerator that cools bottled or canned beverages and dispenses the bottled or canned beverages on payment.'' (42 U.S.C. 6291(40)) Thus, whether equipment is a beverage vending machine covered under EPCA depends on whether it cools and dispenses ''bottled beverages'' and/or ''canned beverages,'' and, in the Framework Document, DOE requested feedback on the meaning of these terms. The following summarizes public comments on this issue.

PepsiCo stated that there are many types of packaging for beverages that cannot be categorized as a can or bottle. (Public Meeting Transcript, No. 8 at p. 36) Dixie-Narco questioned how DOE's packaging definition will take into account evolving package types over time. (Public Meeting Transcript, No. 8 at p. 37) PepsiCo elaborated, asking how DOE will treat other types of packaging (e.g., pouch-type packaging and packaging that is a combination of plastic and paperboard). (Public Meeting Transcript, No. 8 at pp. 40–41) The National Automated Merchandising Association (NAMA) then asked whether DOE will include aseptic packaging as a bottle or can.[19] (Public Meeting Transcript, No. 8 at p. 41)

Dixie-Narco suggested that DOE should use the term ''beverage containers'' to describe the items refrigerated beverage vending machines dispense. (Public Meeting Transcript, No. 8 at p. 46) EEI stated that DOE

[17] Typical Meterorological Year 2 (TMY2) Data (from the 1961–1990 National Solar Radiation Data Base). Available at: *http://rredc.nrel.gov/solar/old_data/nsrdb/tmy2/*.

[18] Available on DOE's Web site at *http://www.eere.energy.gov/buildings/appliance_standards/commercial/beverage_machines.html*.

[19] An aseptic package is a package that is intended to prevent spoilage and is used for long-term storage of its contents.

should expand the list of vended items to more than just bottles and cans. (Public Meeting Transcript, No. 8 at p. 42) It suggested that DOE should add ''other beverage container'' to the list of vended items that delineate what constitutes a beverage vending machine, and that DOE should define that term, so as to include other combinations (e.g., plastic and paperboard, metal and plastic, metal and glass) or other materials that may contain a beverage that will be housed in a refrigerated beverage vending machine. EEI noted that another option would be to add the phrase ''packaged beverage-refrigerated'' to the list of vended products that define what equipment is a beverage vending machine. (EEI, No. 12 at p. 3)

The Alliance to Save Energy, the American Council for an Energy Efficient Economy (ACEEE), the Appliance Standards Awareness Project (ASAP), the Natural Resources Defense Council (NRDC), the Northeast Energy Efficiency Partnerships (NEEP), and the Northwest Power and Conservation Council, in comments they jointly filed (hereafter ''Joint Comment''), stated that the definitions suggested by DOE for the terms ''bottle'' and ''can'' seem workable, except that the term ''can'' should be broadened to include plastic. The Joint Comment also noted the distinction between what is a ''can'' and what is a ''bottle'' is not important, as long as all types of containers are included. (Joint Comment, No. 13 at p. 3) Dixie-Narco agreed with this comment. The Joint Comment suggested using the ASHRAE standard package (i.e., a 12-ounce, 355-milliliter can) as a thermal load in the test procedure. (Dixie-Narco, No. 14 at p. 1)

After carefully reviewing these comments, DOE has tentatively decided to consider broader definitions for the terms ''bottled'' and ''canned'' as they apply to beverage vending machines. DOE believes a bottle or can in this context refers to ''a sealed container for beverages,'' so a bottled or canned beverage is ''a beverage in a sealed container.'' Such definition would avoid unnecessary complications regarding the material composition of the container. Furthermore, a single, encompassing definition will eliminate the need to determine whether a particular container is a bottle or a can. DOE seeks comment on this broader definition, both as to the definition itself and whether it is consistent with the intent of the Act.

Combination vending machines are vending machines that dispense cooled beverages as well as other beverages and food items. These types of vending machines are discussed in Section 5.a below.

2. Equipment Classes

In general, when evaluating and establishing energy conservation standards, DOE divides covered equipment into equipment classes by the type of energy used, capacity, or other performance-related features that affect efficiency and factors such as the utility of such feature(s) to users. (42 U.S.C. 6295(q)) DOE routinely establishes different energy conservation standards for different equipment classes based on these criteria.

A number of characteristics of beverage vending machines have the potential to affect their energy use and efficiency, and accordingly, to be the basis for separate equipment classes for these machines. In the Framework Document, DOE suggested and sought feedback on two issues that could affect equipment class designations: (1) Indoor-only and indoor/outdoor machines; and (2) glass-front and solid-front machines.

With regard to glass-front and solid-front machines, ACEEE stated it may be better to distinguish equipment classes as ''zone-cooled'' and ''fully-cooled'' rather than ''solid-front'' and ''glass-front'', respectively. It asserted that the latter two demarcations overlap to some extent, and some important distinctions make zone-cooled and fully-cooled better classifications. (Public Meeting Transcript, No. 8 at p. 85) NAMA stated that during vending machine efficiency meetings with the Canadian Standards Association (CSA), the CSA's standards committee recommended ''zone-cooled'' and ''fully-cooled'' as the two classes of refrigerated beverage vending machines. (Public Meeting Transcript, No. 8 at p. 58) Dixie-Narco and Coca-Cola agreed that using these designations to define equipment classes has merit. (Public Meeting Transcript, No. 8 at pp. 63–64)

As stated earlier, DOE categorizes equipment classes based on different performance-related or utility-related factors that affect efficiency. PG&E stated that the efficiency of a machine depends on whether it is zone-cooled or fully-cooled. (Public Meeting Transcript, No. 8 at p. 62) Dixie-Narco stated that, all other things being equal, zone-cooled machines use less energy than fully-cooled machines because their refrigeration system is smaller. (Public Meeting Transcript, No. 8 at p. 103) PepsiCo expressed a similar opinion, adding that it would like to see standards based on energy use, rather than trying to define what the design of the machine should be. (Public Meeting Transcript, No. 8 at p. 103)

Based on public comments, DOE agrees that ''zone-cooled'' and ''fully-cooled'' are more appropriate descriptors for beverage vending machines that are solid-front and glass-front, respectively, and intends to use this terminology in this rulemaking.

In addition to whether a beverage vending machine is zone-cooled or fully-cooled, the ambient conditions that a machine operates in can also affect its energy efficiency. EEI and NFESC stated that there should be separate equipment classes for indoor-only and indoor/outdoor machines. (Public Meeting Transcript, No. 8 at p. 50 and NFESC, No. 15 at p. 4) Dixie-Narco commented that a classification is needed for the outdoor machines simply because of the large number of machines that Coca-Cola and PepsiCo own; some smaller operators may primarily have indoor locations, but no one should be excluded. (Public Meeting Transcript, No. 8 at p. 94) Coca-Cola stated that a distinction between indoor-only and indoor/outdoor machines has to do with weatherization and how they tolerate environmental effects. Specifically, Coca-Cola stated that indoor/outdoor machines are more weatherproof and designed to be less influenced by environmental effects, such as high humidity and direct contact with moisture. (Public Meeting Transcript, No. 8 at p. 55) Dixie-Narco commented that the primary differences between indoor-only and indoor/outdoor machines are vandalism-prevention features. (Public Meeting Transcript, No. 8 at p. 53)

Southern California Edison's Refrigeration and Thermal Test Center (RTTC) asked whether it would be appropriate to have a category for outdoor-only machines since there probably will be glass-front outdoor machines in the future. RTTC stated that the larger refrigeration system needed for an outdoor machine would not be the proper size for indoor conditions. (Public Meeting Transcript, No. 8 at p. 89) In contrast, Dixie-Narco stated that outdoor machines today can be used indoors and outdoors, but that classification is acceptable because the machine can be tested to the worst-case environment. According to Dixie-Narco, indoor-only machines are tested to the 75 °F/45 percent RH condition, so when an outdoor machine is tested indoors, lower energy use is measured because of the lower rating conditions. Dixie-Narco did not see any need to have additional specifications. (Public Meeting Transcript, No. 8 at p. 89) ACEEE summarized the discussion at the

Framework public meeting, stating it heard there should be an outdoor category with subcategories for zone-cooled and fully-cooled machines, and an indoor category without any subcategories. (Public Meeting Transcript, No. 8 at p. 94) ACEEE suggested three equipment classes based on the discussion at the Framework public meeting: (1) A zone-cooled machine tested at 90 °F; (2) a fully-cooled machine tested at 75 °F; and (3) a fully-cooled machine tested at 90 °F. (Public Meeting Transcript, No. 8 at p. 68).

Dixie-Narco stated that variable-speed compressors are increasingly being used in vending machines, and they adapt to the load indoors and outdoors. Moreover, Dixie-Narco argued that these compressors are no less efficient indoors, even if they are sized to operate outdoors. Dixie-Narco stated that in order to be able to meet ENERGY STAR Tier 2 levels and above, manufacturers will have to use variable speed compressor technology. (Public Meeting Transcript, No. 8 at p. 91) Dixie-Narco recommended consolidating into one rating condition so that both indoor and outdoor vending machines are tested at a standard of 75 °F/45 percent RH. (Dixie-Narco, No. 14 at p. 2).

Based on the public comments above and anecdotal information that few glass-front or fully-cooled machines (certified for indoor use only) are actually installed outdoors (because of safety and vandalism reasons) and very few other machines are certified for indoor use only, DOE now intends to designate the following two equipment classes of beverage vending machines for this rulemaking:

(a) Class A Machine (fully-cooled machines).

(b) Class B Machine (any beverage vending machine not considered to be Class A)

DOE recognizes that fully-cooled beverage vending machines virtually always have glass fronts, and DOE has designated these machines as ''Class A.'' DOE has designated as ''Class B'' any other beverage vending machine that cannot be considered Class A. DOE intends to use these two equipment classes rather than four as suggested in the Framework Document. DOE does not find it necessary to establish separate equipment classes for indoor machines and outdoor machines, because of the similarities between average indoor and outdoor operating conditions. Thus, DOE intends to use two equipment classes (Class A and Class B), as described in further detail below.

The ''Class A'' beverage vending machine equipment class is comprised of machines that cool the entire internal volume. Class A machines generally use ''shelf-style'' vending mechanisms and tend to utilize a transparent (glass or transparent polymer) front,. Because the next-to-be-vended product is visible to the consumer and any product can be selected by the consumer off of the shelf, all bottled or canned beverage containers are necessarily enclosed within the refrigerated volume.

The ''Class B'' beverage vending machine equipment class is generally composed of machines that have an opaque front (which provides better insulation from ambient conditions) and utilize a ''stack-style'' vending mechanism. These machines are usually installed either indoors or outdoors. The energy consumption of the outdoor machines varies with the varying ambient conditions. However, as stated earlier, the average energy consumption of these machines is very similar to that of machines installed indoors. Typically, though, unlike the Class A machines, only a fraction (or a zone) of the volumes of the Class B machines (usually the bottom third of the machine) is cooled. Hence, they are also sometimes referred to as ''zone-cooled'' machines.

3. Selection of Baseline Equipment—Use of the ENERGY STAR Criteria

Once DOE establishes equipment classes, it selects a baseline model as a reference point for each class, and measures changes resulting from energy conservation standards against the baseline. The baseline model in each equipment class represents the characteristics of equipment typical of that class (e.g., vendible capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market. At present, there are no existing energy conservation standards for beverage vending machines covered under this rulemaking.

However, the U.S. Environmental Protection Agency (EPA) has developed voluntary energy performance criteria for beverage vending machines as part of the ENERGY STAR labeling program. ENERGY STAR has a two-tiered specification for refrigerated beverage machines. Tier 1 has been in effect for new machines since April 1, 2004, and for refurbished machines since April 31, 2006. The Tier 2 criteria went into effect on July 1, 2007 for all new machines.

Originally, the top 25 percent of beverage vending machines qualified for ENERGY STAR Tier 1. Now, however, some manufacturers are producing even more-efficient machines that qualify for Tier 2, and a majority of the machines being manufactured meet or exceed Tier 1 levels. However, there are some models currently in the market that are less efficient than the Tier 1 levels. In the Framework Document, DOE suggested setting the ENERGY STAR Tier 1 specification as the baseline efficiency level for all classes of beverage vending machines covered under this rulemaking. (More details regarding the specifications can be found in Chapter 3 of the TSD.)

ACEEE asserted that the ENERGY STAR Tier 1 specification can probably be considered the baseline for solid-front machines, but that for glass-front machines, the baseline may have to be slightly lower. (Public Meeting Transcript, No. 8 at p. 114) In contrast, Dixie-Narco stated that Tier 1 level would be a good baseline for glass-front machines. Dixie-Narco further commented that all of the glass-front machines that both of its competitors sell are ENERGY STAR qualified, and that it would be comfortable meeting those levels for its glass-front machines as well. (Public Meeting Transcript, No. 8 at p. 116) EEI and Royal Vendors agreed that Tier 1 would be an appropriate baseline level. (Public Meeting Transcript, No. 8 at p. 118; Royal, No. 11 at p. 3)

The Joint Comment agreed that models meeting the ENERGY STAR Tier 1 specification should be used as the baseline because more than 90 percent of indoor/outdoor beverage vending machines meet this specification, and a large and growing volume of indoor-only machines meet this specification as well. The Joint Comment added that in the next two years, it is expected that nearly all indoor-only machines will meet this specification, because of the trend for beverage companies to only want to purchase ENERGY STAR-qualified equipment. (Joint Comment, No. 13 at p. 3) Moreover, PepsiCo stated that it requires the manufacturers with which it contracts to build new machines to meet the California Energy Commission standard, which is the same as the ENERGY STAR Tier 1 requirement. (Public Meeting Transcript, No. 8 at p. 265) Coca-Cola stated that it has mandated that all Coca-Cola vending machines are to use half as much energy by 2010 as in 2000, adding that this reduction would certainly meet ENERGY STAR Tier 1 qualifications.

USA Technologies noted that there are three primary manufacturers in the industry and that each makes three primary models. According to USA Technologies, these nine models probably represent more than 90 percent of the beverage vending machines purchased each year. Thus, USA Technologies commented that by considering the energy consumption of these models and the number of units purchased over the last five years, the baseline model would be clear. (Public Meeting Transcript, No. 8 at p. 115)

Based on stakeholder feedback and current market trends, DOE expects that in the absence of new standards, most, if not all, new machines will meet the ENERGY STAR Tier 1 level by 2012. Therefore, DOE is using ENERGY STAR Tier 1 as the baseline efficiency level since it roughly represents the least-efficient equipment likely to be sold in 2012.

4. Normalization Metric

For both residential and commercial refrigerators, EPCA and DOE implementing regulations set standards for each of several classes. These classes, for the most part, are not defined by size, but are instead based upon their design configurations and whether rated for indoor or outdoor use; therefore, these classes include equipment of varying sizes. Because a refrigerator's energy use is a function of its size, the standard for each class incorporated a formula which, in effect, prescribes a maximum amount of energy use that varies by size of equipment within that class. (10 CFR 430.32(a) and 10 CFR 431.66) A key factor in each such formula is a ''normalization metric,'' which represents equipment size (e.g., refrigerated volume) and allows the maximum allowed energy use to vary by the size of the equipment. DOE is using the same approach in developing standards in this beverage vending machine rulemaking.

In the Framework Document, however, DOE set forth the currently used industry metric of vendible capacity (i.e., number of cans) of a beverage vending machine as well as the refrigerated volume metric as is being used in commercial refrigerators. During the Framework public meeting, DOE asked for comment on which of these normalization metrics would be most appropriate for the beverage vending machines in this rulemaking.

In response, Coca-Cola stated that for the current test metric (i.e., vendible capacity), the DOE test procedure does not reflect the current state of the beverage vending machine industry. (Public Meeting Transcript, No. 8 at p. 69) Dixie-Narco, Crane Merchandising Systems, Coca-Cola, and PepsiCo all agreed that refrigerated volume would provide the best normalization metric for beverage vending machines. (Public Meeting Transcript, No. 8 at pp. 86–125) Dixie-Narco then asked whether industry consensus standards (e.g., AHAM standards) exist for measuring refrigerated volume in refrigerators that could be adapted for use in assessing beverage vending machines. (Public Meeting Transcript, No. 8 at p. 87) At the meeting, DOE responded that the test procedures in ANSI/AHAM HRF–1–2004, may be relevant and is currently in use for residential refrigerators.

Dixie-Narco stated that a method to measure refrigerated volume must be determined. Dixie-Narco stated that the industry must examine residential and commercial refrigeration equipment and try to develop an agreed-upon method of measuring the refrigerated volume of vending machines. Dixie-Narco stated that once this is done, it will have energy-consumption data it can provide to DOE for analysis. (Public Meeting Transcript, No. 8 at p. 134) Royal Vendors stated that California just published new energy standards,[20] and that California will require manufacturers to measure and report the refrigerated volume of all vending machines according to the AHAM 1974 volume calculation (i.e., ANSI/AHAM HRF–1–1979). Therefore, Royal Vendors stated that manufacturers will be measuring refrigerated volumes for their machines, and it will be public information. (Public Meeting Transcript, No. 8 at p. 135)

Based on the public comments and the recently published California standards which use refrigerated volume for all vending machines, DOE decided to use refrigerated volume as the normalization metric for measuring daily energy consumption for all equipment classes of beverage vending machines. DOE will collect industry data to develop a translation from vendible capacity to refrigerated volume.

5. Scope and Coverage of Equipment

a. Combination Machines

At the Framework public meeting, stakeholders raised a number of questions regarding what types of beverage vending machines would be covered in the present rulemaking. Whirlpool asked whether this rulemaking will cover beverage vending machines that have separate sections for refrigerated and non-refrigerated beverages. (Public Meeting Transcript, No. 8 at p. 45) Dixie-Narco and Crane Merchandising Systems also expressed concern about zone-cooled machines that contain different products in different sections held at different temperatures. These stakeholders suggested that this may cause confusion and may raise questions about the definition of ''zone cooled.'' (Public Meeting Transcript, No. 8 at p. 104)

EEI stated that the types and quantities of products sold in refrigerated vending machines are changing and will have an impact on energy use, which may result in confusion about what this rulemaking covers. EEI suggested that, based on stakeholder feedback, this rulemaking should cover all machines that have at least 50–75 percent of their capacity dedicated to refrigerated, packaged beverages. (EEI, No. 12 at p. 2) EEI also suggested that DOE consider a definition for a ''refrigerated product machine'' to cover machines that sell food along with beverages. EEI noted that if more machines sell both food and beverages, and DOE does not cover this equipment in this rulemaking, there could be a loophole for manufacturers to produce machines that do not meet the standard if there is at least one food (or other non-beverage) item for sale in the equipment. (EEI, No. 12 at p. 3) PG&E asked if DOE could benefit from the California designations of multi-package equipment and non-multi-package equipment[21] when considering what beverage vending machines will be included in this rulemaking. (Public Meeting Transcript, No. 8 at p. 62)

EPCA does not explicitly address ''combination machines'' (i.e., vending machines that dispense cooled beverages as well as other beverages and food items). As discussed above, EPCA directs DOE to set standards for vending machines that cool bottled or canned beverages and dispense them upon payment. (42 U.S.C. 6291(40) and 6295(v)) DOE believes that the language used to define beverage vending machines is broad enough to include any vending machine, as long as some portion of that machine cools bottled or canned beverages and dispenses them upon payment. For this rulemaking, DOE interprets these provisions to cover any vending machine that can dispense at least one type of refrigerated bottled or canned beverage, regardless of the

[20] California Energy Commission, Title 20, 2007 Appliance Efficiency Regulations.

[21] The California Energy Commission defines a ''refrigerated multi-package beverage vending machine'' as a refrigerated beverage vending machine that is able to display and dispense at least 20 discrete types of beverages. (California Energy Commission, Title 20, 2007 Appliance Efficiency Regulations).

other types of vended products (some of which may not be refrigerated).

b. Refurbished Equipment

At the Framework public meeting, PepsiCo also asked whether the new standards would apply to refurbished and remanufactured equipment. (Public Meeting Transcript, No. 8 at p. 230) USA Technologies indicated that, to establish meaningful regulations, DOE must consider the existing machines that are remanufactured or refurbished, as well as new machines. (Public Meeting Transcript, No. 8 at p. 22)

In response to the possibility that DOE could use ENERGY STAR criteria when defining energy standards for beverage vending machines, stakeholders commented on how this would affect their equipment that is currently on the market. Dixie-Narco stated they make some vending machines that do not meet ENERGY STAR criteria, but these machines could be modified to achieve them. (Public Meeting Transcript, No. 8 at p. 131) Royal Vendors volunteered that it also has a model series that does not meet ENERGY STAR criteria because of the loading configuration of the machines, but the series has very low sales. (Public Meeting Transcript, No. 8 at p. 131) PepsiCo stated that a very small percentage of its machines built before 2004 meet ENERGY STAR Tier 1 criteria, but that it would be very expensive to upgrade these machines. (Public Meeting Transcript, No. 8 at p. 245)

DOE has carefully considered its authority to establish energy conservation standards for rebuilt and refurbished beverage vending machines in light of these comments, and as discussed below, has tentatively concluded that its authority does not extend to rebuilt and refurbished equipment. The relevant statutory provisions are discussed below, as well as the agency's rationale in reaching this conclusion.

Section 332 of EPCA provides that it shall be unlawful for any manufacturer or private labeler to distribute in commerce any new covered equipment which is not in conformity with an applicable energy conservation standard. (42 U.S.C. 6302(a)(5) and 6316(a)–(b) (emphasis added)) [22] Congress made section 332 applicable to beverage vending machines because an applicable energy conservations standard is prescribed for that equipment under section 325(v) of EPCA. (42 U.S.C. 6295(v)) Section 332(b) defines ''new covered product'' to mean ''a covered product the title of which has not passed to a purchaser who buys such a product for purposes other than (1) reselling such product, or (2) leasing such product for a period in excess of one year.'' (42 U.S.C. 6302(b)) That is, a new covered product is one for which the title has not passed to a customer.[23]

DOE believes that the definition of ''new covered product'' in section 332 is ambiguous on the question of whether a rebuilt or refurbished beverage vending machine is subject to DOE's authority to set energy conservation standards. On this point, DOE notes that section 332 does not expressly provide that ''new covered product'' means new equipment the title of which is transferred by the original manufacturer to an original owner. Conversely, the definition of ''new covered product'' does not expressly exclude substantially remanufactured equipment that is subsequently resold (i.e., equipment sold or disposed of by the original owner that is rebuilt or refurbished by an entity which resells it to another person). In order to resolve this ambiguity regarding DOE's authority to regulate rebuilt and refurbished beverage vending machines, DOE considered both congressional intent and the nature of the existing beverage vending machine market.

There is no legislative history that reflects Congress's intent. However, DOE views the way Congress chose to define ''new covered product'' in EPCA as the strongest indicator that the term was not intended to apply to rebuilt or refurbished equipment. Specifically, it is unlikely that Congress would have made transfer of ''title'' the test of whether equipment was ''new'' if it intended to cover rebuilt or refurbished equipment. The most reasonable interpretation of the statutory definition is that Congress intended that this provision apply to newly manufactured equipment the title of which has not passed for the first time to a purchaser of the equipment. Such interpretation provides certainty and clarity for the regulated entities subject to these statutory provisions.

In addition, if DOE were to interpret ''new covered product'' as applying to other than *newly* manufactured equipment, EPCA's testing and labeling provisions would be much harder to implement and enforce. Identifying ''manufacturers'' under such an interpretation likely would be difficult,[24] and it also likely would be difficult for DOE to distinguish between rebuilt equipment that is not covered and equipment that has been so extensively rebuilt as to be considered ''new,'' and therefore, subject to these provisions.

DOE understands the concern of some stakeholders that there is a possibility that the energy conservation standards for beverage vending machines could be circumvented if remanufactured machines are not deemed to be ''new covered products.'' DOE understands that the rebuilt and refurbished beverage vending machine market is comprised of either: (1) Equipment sold by the original manufacturer or private labeler, which after purchase by a commercial customer, is then modified and resold by another party; or (2) equipment that, following purchase by a commercial customer, is modified and retained by that customer. However, for the above-stated reasons, DOE has concluded that rebuilt and refurbished beverage vending machines are not ''new covered products'' under EPCA, and therefore, are not subject to DOE's energy conservation standards or test procedures.[25] With respect to the first scenario, upon transfer of the title of the beverage vending machine to the commercial customer, the beverage vending machine is no longer new covered equipment, and therefore, it is not subject to DOE regulations even if it is subsequently resold. Similarly, with respect to beverage vending machines that are refurbished or rebuilt for or by the commercial customer (i.e., they are not resold), DOE lacks authority over those beverage vending machines because they are neither ''new'' covered equipment nor distributed in commerce. Furthermore, if refurbished or rebuilt beverage vending machines that are sold

[22] DOE only regulates equipment that is either specifically enumerated as ''covered products'' or is equipment for which DOE has been granted authority to regulate in another statutory provision. Section 325 of EPCA (42 U.S.C. 6295) grants DOE authority to regulate beverage vending machines, without including the specific language designating them as ''covered products.'' The failure to include the words ''covered product'' in Section 325 of EPCA or to include beverage vending machines in Section 322 of EPCA, which lists the covered products in Part A, does not mean that beverage vending machines will not be treated as ''covered products'' for purposes of DOE exercising its regulatory authority.

[23] In the context of this discussion, the term ''customer'' is used to identify equipment's end user; e.g., ''customer'' does not include a party that takes title of equipment solely for the purpose of resale or for leasing equipment for less than a year.

[24] For example, a business that rebuilds or remanufactures equipment, instead of reselling it and transferring title, could operate as a repair facility for consumers who already own the used equipment. The business would simply rebuild the equipment for a fee and return it to the owner; there would be no transfer of title.

[25] DOE notes that *de minimis* use of used or recycled parts would not make a ''new product'' into a used product.

to another party were covered but not those that are refurbished or rebuilt for the commercial customer, DOE believes this would likely create an inequity that Congress would not have intended since a purpose of EPCA was to establish a single national standard, not multiple standards for the same equipment.

Throughout the history of the energy conservation standards program, DOE has not regulated used consumer products or commercial equipment that has been refurbished, rebuilt, or undergone major repairs, since EPCA only covers new covered equipment distributed in commerce. For all of these reasons, DOE concludes that rebuilt or refurbished beverage vending machines are not new covered equipment under EPCA and, therefore, are not subject to DOE's energy conservation standards or test procedures.

6. Market Assessment

In the market assessment, DOE develops a qualitative and quantitative characterization of the beverage vending machine industry and market structure based on publicly-available information and information submitted by manufacturers and other stakeholders.

Three major beverage vending machines manufacturers hold the vast majority (about 75 percent) of the domestic market share:

- Crane Merchandising/Dixie-Narco, Inc.[26]
- Royal Vendors, Inc.
- Sanden-Vendo America

Several other manufacturers also produce beverage vending machines for the domestic market, including:

- Automatic Merchandising Systems (AMS)
- Distributed Vending Company
- Jofemar USA
- Seaga Manufacturing, Inc.
- The Wittern Group

PepsiCo and Coca-Cola are, by far, the largest customers of beverage vending machines. They do not manufacture beverage vending machines. Instead, they contract with manufacturers that produce equipment with specific design characteristics.

DOE is considering the possibility that small businesses would be particularly affected by the promulgation of energy conservation standards for beverage vending machines. The Small Business Administration (SBA) lists small business size standards for this industry as they are described in the North American Industry Classification System (NAICS) code 333311, *Automated Vending Machine Manufacturing.* The size standard for an industry sets the largest average annual receipts or average number of employees that a for-profit concern can have and still qualify as a small business for Federal Government programs. SBA defines small business manufacturing enterprises for beverage vending machines as having 500 employees or fewer. DOE identified six small business manufacturers in the beverage vending machine industry. DOE will study the potential impacts on these small businesses in detail during the manufacturer impact analysis, which will be conducted as part of the NOPR analysis. See Chapter 3 of the TSD for more information regarding small business manufacturers of beverage vending machines.

DOE recognizes that smaller manufacturers, niche manufacturers, and manufacturers exhibiting a cost structure that differs substantially from the industry average may be differentially affected by the imposition of standards. NAMA stated that it could provide a list of manufacturers along with associated contact information that could be useful for DOE's research. (Public Meeting Transcript, No. 8 at p. 76) DOE is using NAMA's information on manufacturers and contacts to define subgroups of smaller manufacturers. DOE will use this information to analyze how standards enacted by this rulemaking affect smaller manufacturers.

In the Framework Document, DOE requested suggestions for obtaining historical energy usage and equipment shipping information. NAMA stated that shipment data are now privately held and are not reported to NAMA or the Census Bureau. NAMA noted that DOE will have to request historical shipment information directly from manufacturers. (Public Meeting Transcript, No. 8 at p. 75) Dixie-Narco stated that it would provide historical shipment information if asked, but requested the data remain confidential. Dixie-Narco added that obtaining energy-usage information back to 1990 would be difficult, if not impossible, because such information was not recorded by manufacturers at that time. (Public Meeting Transcript, No. 8 at p. 76)

PepsiCo and Coca-Cola recommended that DOE request historical shipment and energy-usage data from EPA and State organizations. (Public Meeting Transcript, No. 8 at pp. 78–82) PepsiCo urged all manufacturers to provide NAMA with all available historical shipment and energy-usage data for aggregation. (Public Meeting Transcript, No. 8 at p. 79)

NAMA stated that it collected some aggregated historical shipment and energy-usage data for the ENERGY STAR program. (Public Meeting Transcript, No. 8 at p. 83) EPA stated that it is creating a summary report for the 2005 shipment information from NAMA and will at least include the shipments of ENERGY STAR-qualified models and an estimate of market penetration. EPA also suggested that, depending on how high market penetration is, shipment of ENERGY STAR-qualified models could serve as a proxy for determining the makeup of the overall market, although the data would not be manufacturer-specific. (Public Meeting Transcript, No. 8 at p. 83) Dixie-Narco stated that EPA has the company's shipment data for 2005, but it did not collect data before 2005. (Dixie-Narco, No. 14 at p. 2) ACEEE summarized that there seem to be two paths for collection and aggregation of historical shipment and energy-usage data: (1) By NAMA, or (2) by a DOE contractor. (Public Meeting Transcript, No. 8 at p. 82)

Dixie-Narco stated at the Framework public meeting that it will try to provide data on its forthcoming models, keeping in mind that ENERGY STAR Tier 2 will take effect in July 2007. Dixie-Narco added that it estimates 80 percent of installed machines will exceed ENERGY STAR Tier 1 levels by 2012. (Public Meeting Transcript, No. 8 at p. 246) Royal Vendors stated that it will cooperate with NAMA to develop equipment shipment data on an industry basis. Royal Vendors noted, however, that trends may be difficult to decipher. (Royal, No. 11 at p. 2)

EEI stated that according to public meeting participants, ''stack-style'' machines were 90 percent of the market and glass-front machines were 10 percent of the market in 2001. However, stack-style and glass-front machines were each 50 percent of the market in 2006. EEI noted that if market shares continue changing in this direction, baseline energy-usage and energy-efficiency upgrade possibilities could be affected. (EEI, No. 12 at p. 3)

In summary, it is evident that NAMA does not have the historical shipment and energy-usage data necessary to determine efficiency trends in the industry. Therefore, DOE will contact ENERGY STAR program staff and State organizations and use their websites and various industry reports to obtain historical shipment and energy-usage data.

[26] Crane Merchandising purchased Dixie-Narco, Inc. on October 23, 2006, after the Framework public meeting was held.

7. Technology Assessment

In the technology assessment, DOE identifies technologies and design options that could improve the efficiency of beverage vending machines. This assessment provides the technical background and structure on which DOE bases its screening and engineering analyses. For beverage vending machines, DOE based its list of technologically-feasible design options on input from manufacturers, industry experts, component suppliers, trade publications, and technical papers. See Chapter 3 of the TSD for additional detail on the technology assessment and technologies analyzed. However, the following discussion provides an overview of the salient aspects of the technology assessment, including issues on which DOE seeks public comment.

In the Framework Document, DOE identified and sought feedback on the applicable technologies and designs which have the potential to improve the energy efficiency of the identified equipment classes. A detailed discussion of these technologies and design options is given in Chapter 3 of the TSD. In response, Dixie-Narco asserted that certain technology options on DOE's list are not compatible with each other. (Public Meeting Transcript, No. 8 at p. 155) Furthermore, EEI commented that several of the technologies may already be incorporated into the baseline units being manufactured and installed in the United States. (EEI, No. 12 at p. 4)

Several stakeholders addressed other means for reducing the energy use of beverage vending machines, offering both general and specific suggestions. Specifically, Royal Vendors stated that the important systems and components which may impact the energy efficiency of a beverage vending machine are the sealed cooling unit, evaporator/circulating fan, lighting, insulation, and door-sealing systems. It noted that ENERGY STAR Tier 1 qualified machines include an effective combination of these systems with a focus on lighting, compressor efficiency, and efficient evaporator/circulating fan motor impellers. To improve the energy efficiency of beverage vending machines, Royal Vendors suggested adding T8 lamps with electronic ballasts, low-ballast-factor ballasts, electronically-commutated fan motors with engineered impeller and venturi rings, and capillary tube systems with liquid-suction heat exchangers. Royal Vendors also stated that anti-sweat heaters are no longer in use and can be removed from the list of technologies considered. (Royal, No. 11 at p. 3)

On this issue, Coca-Cola stated that the manufacturers which supply the company with beverage vending machines have already discontinued use of capillary tube expansion devices (which consume more energy) and are starting to instead use more-efficient thermostatic and electronic expansion valves. Coca-Cola stated that some manufacturers are researching other technologies such as Stirling refrigeration, which uses temperature differential to provide electrical power. (Public Meeting Transcript, No. 8 at p. 92) EEI and ACEEE agreed that ballasts using dimming technology should be considered a technology option as a means of decreasing the energy consumption associated with beverage vending machine lighting. (Public Meeting Transcript, No. 8 at p. 92; Joint Comment, No. 13 at p. 3) EEI added that DOE may want to investigate other lighting technologies such as T5 fluorescent lamps and dimmable light emitting diode (LED) systems. (EEI, No. 12 at p. 4) PG&E expressed a similar opinion that there are many opportunities to save energy in lighting beverage vending machines. PG&E also suggested considering additional fan motor technologies. (Public Meeting Transcript, No. 8 at p. 172) USA Technologies stated that the technology options list should also include energy-management systems, which restrict the energy use of equipment in a room when it is not occupied. (Public Meeting Transcript, No. 8 at p. 149).

DOE is addressing all the technology options suggested and welcomes further public comment on this issue. See the screening analysis portion of this ANOPR and Chapter 3 of the TSD for more details on these technology options.

B. Screening Analysis

The purpose of the screening analysis is to evaluate the technology options identified as having the potential to improve the efficiency of equipment, in order to determine which technologies to consider further and which to screen out. DOE consulted with industry, technical experts, and other interested parties to develop a list of technologies for consideration. DOE then applied the following four screening criteria to determine which technologies are unsuitable for further consideration in the rulemaking:

(1) *Technological Feasibility.* Technologies incorporated in commercial equipment or in working prototypes will be considered technologically feasible.

(2) *Practicability to Manufacture, Install, and Service.* If mass production and reliable installation and servicing of a technology in commercial equipment could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will be considered practicable to manufacture, install, and service.

(3) *Adverse Impacts on Equipment Utility or Equipment Availability.* If a technology is determined to have significant adverse impact on the utility of the equipment to significant subgroups of consumers, or result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.

(4) *Adverse Impacts on Health or Safety.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

10 CFR Part 430, Subpart C, Appendix A at 4(a)(4) and 5(b).

1. Technology Options Screened Out

In the market and technology assessment (Chapter 3 of the TSD), DOE developed an initial list of technologies expected to have the potential to reduce the energy consumption of beverage vending machines. In the screening analysis, DOE screened out technologies based on four criteria discussed above (i.e., technological feasibility, practicability to manufacture, changes to equipment utility, and safety). The list of remaining technologies becomes one of the key inputs to the engineering analysis (discussed subsequently). For reasons explained below, DOE screened out a number of technologies (which were not input into the energy consumption model), including higher-efficiency evaporator and condenser fan blades, low-pressure differential evaporators, and defrost mechanisms.

Higher-efficiency evaporator and condenser fan blades reduce motor shaft power requirements by moving air more efficiently. Current beverage vending machine designs use stamped sheet metal or plastic axial fan blades. These fan blades are lightweight and inexpensive. DOE was not able to identify any axial fan blade technology that is significantly more efficient than that which is currently in use, but it did identify and consider one alternative fan blade technology that could potentially improve efficiency—tangential fan blades. Tangential fan blades can produce a wide, even airflow, and have the potential to allow for increased

saturated evaporator temperature (SET) through improved air distribution across the evaporator coil, which would reduce compressor power. However, tangential fan blades are less efficient at moving air, and, thus, require greater motor shaft power. Because of these competing effects, the use of tangential fan blades would not be expected to improve energy efficiency, so DOE did not consider tangential fan blades as a design option.

Low-pressure differential evaporators reduce energy consumption by reducing the power level required of evaporator fan motors. However, in space-constrained equipment such as beverage vending machines, this reduction usually comes from a decrease in evaporator coil surface area, which generally requires a lower SET to achieve the same discharge air temperature and cooling potential. This, in turn, results in a reduction in compressor efficiency. Because of these competing effects, the use of low-pressure differential evaporators would not be expected to improve energy efficiency, so DOE did not consider low-pressure differential evaporators as a design option.

Defrosting for beverage vending machines is typically accomplished with off-cycle defrost (which uses no energy and decreases compressor on-time), although DOE understands that this function also may be accomplished with electric resistance heating. Because the vast majority of machines already use off-cycle defrost (a typical feature in baseline equipment), DOE has determined that there is currently no defrost design option capable of more effectively reducing defrost energy consumption for equipment that uses off-cycle defrost. For these reasons, DOE did not consider off-cycle defrost as a design option for achieving further improvements in energy efficiency.

DOE eliminated four other technologies considered in the market and technology assessment—thermoacoustic refrigeration, magnetic refrigeration, electro-hydrodynamic heat exchangers, and copper rotor motors—because all four are currently in the research stage, and DOE believes that they would not be practicable to manufacture, install, and service on the scale necessary to serve the relevant market at the time of the effective date of the standard (i.e., 2012). Because these technologies are in the research stage, DOE also cannot assess whether they would have any adverse impacts on utility to significant subgroups of consumers, would result in the unavailability of any types of equipment, or would present any significant adverse impacts on health or safety. Therefore, DOE will not consider these technologies as design options for improving the energy efficiency of beverage vending machines.

2. Technology Options Considered Further in Analysis

After screening out technologies in accordance with the provisions set forth in 10 CFR Part 430, Subpart C, Appendix A, (4)(a)(4) and (5)(b), DOE is considering the following nine technologies, or ''design options,'' as viable means of improving energy efficiency of the beverage vending machines covered under this ANOPR. The market and technology assessment (TSD Chapter 3) provides a detailed description of these design options. These design options will be considered by DOE in the engineering analysis:

- More-efficient lighting and ballasts.
- More-efficient evaporator fan motors.
- Evaporator fan motor controllers.
- Improved evaporator design.
- Insulation increases or improvements.
- Improved glass pack (for Class A machines).
- Higher efficiency condenser fan motors.
- Improved condenser design.
- More-efficient compressors.

In the Framework Document, DOE stated that to the greatest extent possible, it would base its engineering analysis on commercially-available equipment which incorporates one or more of the design options listed above. In this way, DOE is better able to apply these features in a manner consistent with real world applications. DOE stated that it would consider a proprietary design in the subsequent analyses only if it is not a unique path to a given efficiency level.

Several stakeholders provided comments on the issue of proprietary technologies in the context of the beverage vending machine rulemaking. NFESC responded that DOE should consider whether efficiency levels attainable only through proprietary technologies can be made part of the efficiency standard if that technology were to be made available through licensing agreements at a reasonable cost. (NFESC, No. 15 at p. 6) USA Technologies stated that its products are patented, but available to anyone in the industry anywhere in the world. (Public Meeting Transcript, No. 8 at p. 182) USA Technologies also noted that it has a proprietary patented design that will take many of the ENERGY STAR Tier 1 machines to Tier 2 levels and make some Tier 2 machines even more efficient. USA Technologies added that there is technology in the market today capable of driving energy costs down at a very reasonable cost to the manufacturer. USA Technologies urged DOE not to exclude these proprietary technologies from the analysis, although it also acknowledged that the market should remain competitive. (Public Meeting Transcript, No. 8 at p. 176).

PepsiCo agreed with DOE's approach, claiming that certain proprietary technologies should be excluded. PepsiCo cited the example of how Coca-Cola has patented several energy management technologies that are not available to PepsiCo. (Public Meeting Transcript, No. 8 at p. 181) Dixie-Narco stated that proprietary designs that include add-on or non-permanent energy management devices not installed by the manufacturer must be excluded from consideration in this rulemaking, since the manufacturer is ultimately responsible for all technologies incorporated in beverage vending machines. (Dixie-Narco, No. 14 at p. 4)

As noted previously, DOE will consider all proprietary designs unless they are the only way to reach a given efficiency level, in which case they will be rejected from further analysis. With regard to proprietary add-on energy management devices, DOE has not considered these devices as design options because they are external to the vending machine and/or are not installed by the manufacturer. DOE is sensitive to stakeholder concerns regarding proprietary designs and will make provisions to maintain the confidentiality of any proprietary data stakeholders submit. This information will provide input to the competitive impact assessment and other economic analyses.

For more details on how DOE developed the technology options and the process for screening these options and the design options that DOE is considering, see the market and technology assessment (Chapter 3 of the TSD) and the screening analysis (Chapter 4 of the TSD).

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the cost and efficiency of beverage vending machines. For each equipment class, this relationship estimates the baseline manufacturer cost, as well as the incremental cost for equipment at efficiency levels above the baseline. In determining the performance of higher-efficiency equipment, DOE considers technologies and design option combinations not

eliminated by the screening analysis. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (i.e., the LCC and PBP analyses and the NIA).

DOE typically structures its engineering analysis around one of three methodologies: (1) The design-option approach, which calculates the incremental costs of adding specific design options to a baseline model; (2) the efficiency-level approach, which calculates the relative costs of achieving increases in energy efficiency levels; and (3) the reverse-engineering or cost-assessment approach, which involves a ''bottoms-up'' manufacturing cost assessment based on a detailed bill of materials derived from beverage vending machine tear-downs.

1. Approach

In this rulemaking, DOE is adopting a design-option approach, which calculates the incremental costs of adding specific design options to a baseline model. For each equipment class, DOE analyzed three machines of different sizes to assess how energy use varies with size. A small, a medium, and a large machine were chosen for Class A and Class B beverage vending machines, based on current market offerings. See Chapter 3 of the TSD for a detailed description of the Class A and Class B equipment classes and Chapter 5 of the TSD for additional detail on the different machines analyzed.

In the Framework Document, DOE requested feedback on possible use of an efficiency-level approach supported, as needed, by a design-option approach to determine the cost-efficiency relationship for beverage vending machines. DOE stated that it plans to create an industry-wide analysis based primarily on data from stakeholders. The data are intended to represent the average incremental production cost to improve a baseline model to a specified efficiency level. This methodology constitutes an efficiency-level approach to the engineering analysis because it establishes the relationship between manufacturer cost and increased efficiency at predetermined efficiency levels above the baseline. Under this approach, manufacturers typically provide incremental manufacturer cost data for incremental increases in efficiency. Although DOE specifically requested this information from the industry, no such information was provided.

Since an efficiency-level approach was not possible for beverage vending machines, DOE instead decided to use cost estimates of specific design options. This methodology constitutes a design-options approach because it uses individual or combinations of design options to identify increases in efficiency. Under this approach, estimates are based on manufacturer or component supplier data or derived from engineering computer simulation models. Individual design options or combinations of design options are added to the baseline model in ascending order of cost. This approach also involves consultation with outside experts and/or further review of publicly available cost and performance information.

The Joint Comment stated that using manufacturer-supplied efficiency levels that have been checked against design options derived by DOE was acceptable if DOE verified a sufficient number of efficiency improvements with design option data to provide confidence in DOE's overall estimates. The Joint Comment added that for a robust approach, DOE must compare multiple points per equipment class and do additional analysis if the design option and efficiency level data are not in alignment. (Joint Comment, No. 13 at p. 1) The Joint Comment stated that DOE should explore methods of making the detailed manufacturer cost data publicly available, although it recognized that this task would be difficult given DOE's need to strike a balance between manufacturers' requirements for confidentiality and the public's need for transparency in government decision making. In making this request, the Joint Comment explained that manufacturer cost estimates are a ''black box'' for other stakeholders, and making the data submitted by manufacturers publicly available could greatly improve the transparency of the process. (Joint Comment, No. 13 at p. 2)

As explained above, an efficiency-level approach was not possible, so DOE relied solely on a design-option approach in the engineering analysis. Given that there were no manufacturer-provided cost-efficiency curves, DOE was not able to compare the two approaches as suggested by the Joint Comment. However, the design-option approach allows advocates, manufacturers, and other stakeholders the opportunity to review DOE's methodology and assumptions, including cost estimates, as this information is made publicly available through the ANOPR TSD and engineering spreadsheet. Through consultation with outside experts, review of publicly-available cost and performance information, and modeling of equipment cost and energy consumption, DOE believes it has conducted a robust engineering analysis. Chapter 5 of the TSD describes the methodology used to perform the design-option analysis in detail.

2. Equipment Classes Analyzed

Beverage vending machines can be divided into different equipment classes categorized by physical characteristics that affect equipment efficiency. Most of these characteristics affect the merchandise that the equipment cools and vends, and how the customer accesses that merchandise. Key physical characteristics are the door type (e.g., glass-front or solid-front) and the machine's vendible capacity (or refrigerated volume). As described in Section II.A.2, DOE analyzed two equipment classes: Class A (fully-cooled machines) and Class B (all other machines). Furthermore, as discussed above, beverage vending machine energy use varies with volume, so DOE analyzed three different machine sizes for each equipment class to assess how energy use varies with size.

3. Analytical Models

In the design-option approach, DOE used models to develop cost and energy consumption estimates for each equipment class at each efficiency level. DOE used a cost model to estimate the manufacturer production cost (MPC) in dollars, and an energy consumption model to estimate the daily energy consumption in kilowatt hours (kWh) of covered beverage vending machines. Each of these models is discussed in further detail below.

a. Cost Model

DOE used a cost model to estimate the core case cost (i.e., the MPC of the structure, walls, doors, shelving and fascia of the case, but does not include the cost of any energy-using components) of beverage vending machines. This model was adapted from a cost model developed for DOE's rulemaking on commercial refrigeration equipment.[27] The approach for commercial refrigeration equipment involved disassembling a self-contained refrigerator, analyzing the materials and manufacturing processes for each component, and developing a parametric spreadsheet to model the cost to fabricate (or purchase) each component and the cost of assembly. Because of the similarities in manufacturing processes between self-contained commercial refrigeration equipment and vending machines, DOE

[27] See *http://www.eere.energy.gov/buildings/appliance_standards/commercial/refrigeration_equipment.html* for further detail on and validation of the commercial refrigeration equipment cost model.

was able to adapt the commercial refrigeration equipment cost model for beverage vending machines by maintaining many of the assumptions about materials and manufacturing processes but modifying the dimensions and types of components to be specific to beverage vending machines. To confirm the accuracy of the cost model, DOE obtained input from stakeholders on beverage vending machine production cost estimates and on other assumptions used in the model. DOE believes this approach is acceptable, given the similarities in materials and manufacturing processes between commercial refrigeration equipment and beverage vending machines. Chapter 5 of the TSD provides details of the cost model.

In the Framework Document, DOE sought feedback from manufacturers on incremental manufacturing costs and components in terms of design options to improve energy efficiency. The Joint Comment stated that the cost estimates should assume mass production, since efficiency standards could make today's expensive niche products tomorrow's lower-cost commodity products. (Joint Comment, No. 13 at p. 2)

The Joint Comment stated that DOE should account for market forces in computing typical costs using manufacturer cost estimates. Based on past experience, the Joint Comment explained that the various cost estimates that DOE will collect from manufacturers can vary significantly from manufacturer to manufacturer. Also, manufacturers with below-average costs will determine market prices, because higher-priced manufacturers will need to reduce costs to remain competitive. Therefore, the Joint Comment recommended that DOE should use the simple average of the market-share-weighted average cost estimate and the lowest cost estimate. (Joint Comment, No. 13 at p. 2)

EEI mentioned that the increasing cost of commodities such as steel, copper, aluminum, and plastic may affect this rulemaking. EEI stated that commodity prices for plastics, for example, have risen dramatically in the past few years because of the increase in oil prices. However, EEI also noted that high prices may dictate redesigns to avoid using those materials. (Public Meeting Transcript, No. 8 at p. 181 and EEI, No. 12 at p. 5) PG&E stated that just as the prices of raw materials have gone up, so have the prices of primary energy. (Public Meeting Transcript, No. 8 at p. 183)

In response to these comments, DOE conducted a sensitivity analysis on material prices similar to the analysis presented in the commercial refrigeration equipment rulemaking. DOE determined the cost of raw materials by using prices for copper, steel, and aluminum from the American Metals Market.[28] Prices for rifled and unrifled copper tubing were obtained directly from a tubing manufacturer. Because metal prices have fluctuated drastically over the last few years, DOE used metal prices that reflect a five-year average of the Bureau of Labor Statistics Producer Price Indices (PPIs)[29] from 2002 to 2006 with an adjustment to 2006$. DOE used the PPIs for copper rolling, drawing, and extruding, and steel mill products, and DOE made the adjustments to 2006$ using the gross domestic product implicit price deflator. Because it is not clear if these material price trends will continue, DOE conducted a sensitivity analysis to illustrate the effect of raw material price variability on the cost of beverage vending machines. See Chapter 5 of the TSD for more details on this sensitivity analysis.

DOE applied a manufacturer markup to the MPC estimates to arrive at the MSP. MSP is the price of equipment sold at which the manufacturer can recover both production and non-production costs and earn a profit. DOE developed a market-share-weighted average industry markup by examining gross margin information from the annual reports of several major beverage vending machine manufacturers and Securities and Exchange Commission (SEC) 10–K reports.[30] The manufacturers whose gross margin information DOE examined represent approximately 70 percent of the beverage vending machine market, and each of these companies is a subsidiary of a more diversified parent company that manufactures equipment other than beverage vending machines. Because the SEC 10–K reports do not provide gross margin information at the subsidiary level, the estimated markups represent the average markups that the parent company applies over its entire range of offerings.

Markups were evaluated for 2001 to 2006. The manufacturer markup is calculated as 100/(100 − average gross margin), where average gross margin is calculated as revenue − cost of goods sold (COGS). To validate the information, DOE reviewed its assumptions with beverage vending machine manufacturers. During interviews (see Chapter 12 of the TSD), beverage vending machine manufacturers stated that many manufacturers generate revenue and profit by providing other goods and services, and their margins for beverage vending machines are lower than their company-wide margin. Taking this information into consideration, DOE is using an industry-wide manufacturer markup of 1.03 in the engineering analysis.

b. Energy Consumption Model

The energy consumption model estimates the daily energy consumption of beverage vending machines at various performance levels using a design-option approach. The model is specific to the equipment covered under this rulemaking, but is sufficiently generalized to model the energy consumption of all covered equipment classes. For a given equipment class, the model estimates the daily energy consumption for the baseline and the energy consumption of several performance levels above the baseline. The model is used to calculate each performance level separately. For the baseline level, a corresponding cost is calculated using the cost model. For each level above the baseline, the cost increases resulting from the addition of various design options are used to recalculate the cost.

In developing the energy consumption model, DOE made certain assumptions, including general assumptions about the analytical methodology and specific assumptions regarding load components and design options. DOE based its energy consumption estimates on new equipment tested in a controlled-environment chamber under the procedures and conditions specified in ANSI/ASHRAE Standard 32.1–2004, *Methods of Testing for Bottled, Canned, and Other Sealed Beverages*.[31] Manufacturers of beverage vending machines must certify that their equipment complies with Federal standards using this test method, which specifies a certain ambient temperature, humidity, and other requirements. One relevant specification that DOE noted is absent from this standard is the operating hours of the display case lighting during a 24-hour period. Thus, DOE is considering the operating time to be 24 hours (i.e., that lights are on throughout the 24-hour period) when conducting the analyses for this rulemaking. Chapter 5 of the TSD

[28] American Metals Market, *http://www.amm.com/*.

[29] U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Indices, *http://www.bls.gov/ppi/*.

[30] Available at: *http://www.sec.gov/edgar.shtml*.

[31] These test procedures are incorporated by reference at 10 CFR 431.294.

details these and other beverage vending machine considerations.

The energy consumption model calculates daily energy consumption (DEC) as being comprised of two major components: (1) Compressor energy consumption; and (2) component energy consumption (expressed as kWh/day). ''Component energy consumption'' is a sum of the direct electrical energy consumption of fan motors, lighting, vend mechanisms, control systems, and coin and bill validators. ''Compressor energy consumption'' is calculated from the total refrigeration load (expressed as British thermal units per hour (Btu/h)) and a compressor model based on the 10-coefficient compressor model in American Refrigeration Institute (ARI) Standard 540–2004, *Performance Rating of Positive Displacement Refrigerant Compressors and Compressor Units*. The total refrigeration load is a sum of the component heat load and the non-electric load. The component heat load is a sum of the heat emitted by evaporator fan motors and lighting inside the refrigerated space. (Condenser fan motors are outside the refrigerated space and do not contribute to the component heat load.) The non-electric load is a sum of the heat contributed by radiation through glass doors (in Class A machines); heat conducted through walls and doors; and sensible and latent loads from warm, moist air infiltration through vend doors and cracks. Chapter 5 of the TSD provides details on component energy consumption, compressor energy consumption, and heat load models.

4. Baseline Models

As mentioned above, the engineering analysis estimates the incremental costs for equipment with efficiency levels above a baseline model in each equipment class. As an initial matter, DOE defined baseline specifications for each equipment class. These specifications include dimensions, numbers of components, operating temperatures, nominal power ratings, and other necessary features to calculate the energy consumption of each equipment class. The baseline specifications define the energy consumption and cost of the typical equipment (i.e., units of typical efficiency) on the market today, namely beverage vending machines meeting ENERGY STAR Tier 1.

DOE established baseline specifications for each of the equipment classes modeled in the engineering analysis by reviewing available manufacturer data, selecting several representative units based upon that data, and then aggregating the physical characteristics of the selected units. As noted above, DOE chose the baseline specifications such that the baseline machines met ENERGY STAR's Tier 1 criteria (see TSD Chapter 3 for further details on the criteria). This process created a representative unit for each equipment class with average characteristics for physical parameters (e.g., volume, wall area), and typical performance for energy-consuming components (e.g., fans, lighting). See Chapter 5 of the TSD for these specifications.

5. Alternative Refrigerants

Generally, DOE must consider in its engineering analysis the effects of regulatory changes outside DOE's statutory energy conservation standards rulemaking process that can affect manufacturers of the covered equipment. Some of these changes could also affect the energy efficiency or energy consumption of the equipment.

In the Framework Document, DOE sought stakeholder input as to whether there are any regulatory issues that it should consider in its analysis of beverage vending machines. DOE identified the phaseout of hydrochlorofluorocarbons (HCFCs) [32] as an example of an external regulatory issue the beverage vending machine industry must address that could affect the engineering analysis. HCFCs contain chlorine, a chemical known to deplete stratospheric ozone. Due to this phaseout, the beverage vending machine industry must transition to non-ozone-depleting refrigerants, such as hydrofluorocarbons (HFCs), hydrocarbons (HCs), and other natural refrigerants (e.g., carbon dioxide (CO_2)). As a result, the beverage vending machine industry generally has been transitioning away from the HCFC-based refrigerants in its equipment. For the beverage vending machines covered in this rulemaking, DOE understands that much of the industry has already been using HFC-based refrigerants, specifically R–134a. Therefore, to address the imminent phaseout of HCFCs, DOE considered the effects of HFC-based refrigerants from the outset of its analyses. Some stakeholders stated, however, that DOE should consider examining other types of refrigerants such as HCs and CO_2.

Coca-Cola commented that it has made a corporate commitment to move beyond HCFC and HFC refrigerants to vending machines that use HCs and CO_2 (i.e., R–744). Coca-Cola expressed concern that current CO_2 systems are not as efficient as systems using HCFC refrigerants, thereby making compliance with any new energy conservation standard more difficult for such machines, if their unique characteristics are not taken into account. (Public Meeting Transcript, No. 8 at p. 146)

EEI stated that the HFC [sic] phaseout begins in 2010 and that the final rule for this rulemaking will be in 2009, with standards becoming effective in 2012. EEI commented that, because of this timing, if Coca-Cola could provide input to DOE on new refrigeration technologies, DOE would not have to perform its own analysis on alternative refrigerants. (Public Meeting Transcript, No. 8 at p. 170) (DOE notes, however, that the phaseout occurring in 2010 is for HCFC-based refrigerants and that no U.S. phaseout of HFC-based refrigerants is currently scheduled.) EEI also stated that it appears that new refrigerants will be in use in beverage vending machines by 2010. According to EEI, certain new technology options should be compatible with the refrigerant of choice starting in 2010, when HCFC-based refrigerants are phased out in the United States. EEI added that due to the global nature of this equipment and the ban on HFC-based refrigerants in some countries, manufacturers are considering CO_2 in all beverage vending machines, and such action could affect design options and baseline energy usage. (EEI, No. 12 at p. 4)

In response to the comments by Coca Cola and EEI, DOE conducted a qualitative examination of the use of HC refrigerants and CO_2 in the beverage vending machine industry. Based on conversations with beverage vending machine manufacturers and industry experts, DOE understands that HC refrigerants (e.g., butane and propane) are extremely flammable, and are classified as A3 refrigerants (low toxicity, high flammability) in the United States. Because of this classification, there are significant difficulties in selling and certifying equipment in the United States that use hydrocarbon refrigerants, and there are currently no manufacturers in the beverage vending machine industry who do so. DOE recognizes that other countries (e.g., Germany) have begun to adopt the use of HC refrigerants. But in the United States, these barriers and the perception of high safety risk has prevented their wide-spread use. DOE believes that the use of these refrigerants in beverage vending machines is not

[32] EPA is phasing out the production and importation of certain HCFC refrigerants (i.e., HCFC–142b and HCFC–22) in new equipment in the U.S. by January 1, 2010. Further, EPA is phasing out the production and importation of all HCFC refrigerants in new equipment in the U.S. by January 1, 2015. 42 U.S.C. 7671(d).

likely and, therefore, did not conduct an analysis using HC refrigerants.

Although CO_2 does not have the volatility issues of HC refrigerants, CO_2 can have lower cycle efficiencies than HFC-based refrigerants such as R–134a. DOE also understands that necessary components, such as compressors, do not yet exist in the market in sizes appropriate for beverage vending machines. Thus, DOE was not able to conduct an analysis on CO_2-based refrigeration systems.

Therefore, due to volatility and availability issues associated with HC refrigerants and CO_2, HFC-based refrigerants are the only alternative refrigerant option DOE plans to consider in this rulemaking. DOE requests additional stakeholder input or data on this issue.

6. Cost-Efficiency Results

The results of the engineering analysis are reported as cost-efficiency data (or ''curves'') in the form of daily energy consumption (DEC) (in kWh) versus MSP (in dollars), which form the basis for subsequent analyses in the ANOPR. DOE developed six curves representing the two equipment classes and three different size machines in each equipment class. The methodology for developing the curves started with determining the energy consumption for baseline equipment and MPCs for this equipment. Above the baseline, DOE implemented design options using the ratio of cost to savings, and implemented only one design option at each level. Design options were implemented until all available technologies were employed (i.e., at a max-tech level). See TSD Chapter 5 for additional detail on the engineering analysis and TSD Appendix B for complete cost-efficiency results.

D. Markups To Determine Equipment Price

This section explains how DOE developed the distribution channel (supply chain) markups to determine installed prices for beverage vending machines (see Chapter 6 of the TSD). DOE used the supply chain markups it developed (including sales taxes and installation costs), along with the MSPs developed from the engineering analysis, to arrive at the final installed equipment prices for baseline and higher-efficiency equipment. Whereas the manufacturer markup DOE used in the engineering analysis was applied to the MPC to arrive at the MSP, these supply chain markups (baseline and incremental markups described below) were applied to the MSPs to arrive at the final installed equipment prices. At the Framework public meeting, the NPCC stated that among universities, school districts, and other public agencies, direct purchases of beverage vending machines by these sectors might be a fairly significant fraction of total machine purchases, and it added that the weighting between the different sectors should be the same as for energy prices. (Public Meeting Transcript, No. 8 at p. 227)

DOE subsequently reviewed different sources of data, including industry reports, and concluded there are three main channels of distribution for beverage vending machines. Businesses and other entities that directly purchase the equipment typically obtain their machines through an equipment wholesaler/distributor and not directly from the manufacturer. Such direct ownership of vending machines by site owners, however, constitutes only about five percent of the total market. Instead, most institutions and manufacturing facilities have machines installed on-site through a ''location contract'' from a vending machine operator or bottler/distributor that owns and stocks the machines.

As Table II.1 demonstrates, DOE identified three distribution channels for beverage vending machines which describe how the equipment passes from the manufacturer to the customer. In the first distribution channel, the manufacturer sells the equipment directly to the beverage bottler/distributor, who installs and operates the machine at a given site. In the second and third distribution channels, the manufacturer sells the beverage vending machine to the equipment wholesaler/distributor, who in turn may sell it to a vending machine operator (who installs and operates the machine at a given site) or to a site owner (who stocks and operates the machine). Table II.1 also provides the estimated distribution channel shares (in percentage of total sales) through each of the three distribution channels.

TABLE II.1.—DISTRIBUTION CHANNELS AND SHARES FOR BEVERAGE VENDING MACHINES

Channel 1	Channel 2	Channel 3
Manufacturer ↓ Beverage Bottler/Distributor	Manufacturer ↓ Equipment Wholesaler/Distributor ↓ Vending Machine Operator	Manufacturer ↓ Equipment Wholesaler/Distributor ↓ Site Owner
68%	27%	5%

For each step in the distribution channels presented above, DOE estimated a baseline markup and an incremental markup, which are additional amounts added when equipment is sold and installed. A baseline markup is applied for the purchase of baseline equipment. An incremental markup is applied to the incremental increase in MSP for the purchase of higher-efficiency equipment. The overall baseline or overall incremental markup is the product of all the markups at each step in the distribution channel. Overall, weighted average baseline or incremental markups for the entire beverage vending machine market can be determined using the shipment weights through each distribution channel and the corresponding overall baseline markup or the corresponding overall incremental markup, respectively, for each distribution channel, and any applicable sales tax.

DOE developed markups for each step of a given distribution channel based on available financial data. Specifically, DOE based the equipment wholesaler/distributor markups on U.S. Census Bureau data [33] for Other Commercial Equipment Merchant Wholesalers (NAICS 423440). This sector includes those establishments primarily engaged in distributing and wholesaling

[33] U.S. Census Bureau. 2002. 2002 Economic Census Release Date: 12/3/2004. Sector 42: Wholesale Trade: Industry Series: Product Lines by Kind of Business for the United States: 2002 at *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-MFG=10971:42&-ds_name=EC0242I3&-_lang=en* (Accessed on April 16, 2007).

refrigerated beverage vending machines and other equipment to restaurants and hotels (NAICS 4234401) and stores (NAICS 4234402). The U.S. Census Bureau data for this sector include revenue and expense data in total dollars, rather than in typical values for an average or representative business. Because of this, DOE assumed the total dollar values that the U.S. Census Bureau reported, once converted to an individual entity basis, represents revenues and expenses for an average or typical wholesaler/distributor business.

DOE calculated baseline markups for wholesalers as total revenue (equal to all expenses paid plus profit) divided by the cost of goods sold (COGS). Expenses include direct costs for equipment, labor expenses, occupancy expenses, and other operating expenses (e.g., insurance, advertising). DOE presumed some expenses (i.e., labor and occupancy) to be fixed and not subject to change with the increases in the efficiency of the equipment being sold. Other expenses are variable costs that may change in response to changes in the COGS. In developing incremental markups, DOE again considered the labor and occupancy costs to be fixed, and the other operating costs and profit to be proportional to the MSP.

The overall markup for a distribution channel is the product of all the markups plus sales tax within that channel. DOE calculated both baseline and incremental overall markups for each distribution channel. DOE calculated sales taxes based on State-by-State sales tax data reported by the Sales Tax Clearinghouse.[34] Sales tax varies by State, so the markup analysis develops distributions of markups within each distribution channel as a function of State.

For the third distribution channel, the site owner of a beverage vending machine usually consists of a business type (e.g., manufacturing facility, office buildings, health care buildings, and retail). Because the State-by-State distribution of beverage vending machines may vary by business type (e.g., manufacturing facilities may be more prevalent relative to retail stores in one part of the country than another), a national level distribution of the markups may be different for each business type.

Average overall markups in each distribution channel can be calculated using estimates of the shipments of beverage vending machines by distribution of State population. However, markups are not uniform among wholesalers. DOE used the Excel spreadsheet-based Crystal Ball program, which employs Monte Carlo analysis, to reflect this uncertainty in the LCC analysis. DOE applied the same baseline and incremental markups to all sales of beverage vending machines passing through equipment wholesaler/distributors, whether to the vending machine operator (channel 2) or to the site owner (channel 3). Table II.2 and Table II.3 show overall baseline and incremental markups for sales within each distribution channel. Chapter 6 of the TSD provides additional detail on markups.

TABLE II.2.—OVERALL AVERAGE BASELINE MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX

	Manufacturer direct	Wholesaler/distributor	Overall weighted average
Markup	1.000	1.46	1.147
Sales Tax	1.068	1.068	1.068
Overall Markup	1.068	1.559	1.226

TABLE II.3.—OVERALL AVERAGE INCREMENTAL MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX

	Manufacturer direct	Wholesaler/distributor	Overall weighted average
Markup	1.000	1.20	1.064
Sales Tax	1.068	1.068	1.068
Overall Markup	1.068	1.282	1.137

E. Energy Use Characterization

The energy use characterization analysis estimates the annual energy consumption of individual beverage vending machines (both baseline and higher-efficiency units) installed indoors or outdoors around the country. DOE uses this estimate, which represents typical energy consumption in the field, as an input in the subsequent LCC and PBP analyses (Chapter 8 of the TSD) and NIA (Chapter 10 of the TSD). DOE estimated the energy use for machines in the two equipment classes (Class A and Class B vending machines)[35] analyzed in the engineering analysis based on the DOE test procedure[36] (Chapter 5 of the TSD).

Beverage vending machines are typically installed in manufacturing facilities and commercial buildings and are considered part of the ''plug loads''[37] of the building. They also contribute to the heat gain to the building on a 24-hour basis. At the Framework public meeting, DOE asked whether it should quantify the effect of more-efficient beverage vending machines (presumably contributing less heat to the building) on building space conditioning loads and, if so, what would be the most effective way of doing this. EEI responded that there might be some impact on building space conditioning loads for about five percent of the installations, based upon their location and concentration. (Public Meeting Transcript, No. 8 at p. 208) In general, EEI remarked that in many situations (e.g., a single machine in a facility or one machine per occupied floor) these impacts are likely to be minimal; however, EEI stated that there could be an appreciable impact on space conditioning loads in indoor areas where multiple machines are concentrated. On this topic, the Joint

[34] The Sales Tax Clearinghouse. Available at: *https://thestc.com/STRates.stm* (Accessed on June 25, 2007).

[35] Class A and Class B vending machines are as described in Section II.A.2 of the ANOPR.

[36] DOE incorporated by reference, ANSI/ASHRAE Standard 32.1–2004, with two modifications, as the DOE test procedure for the beverage vending machines. 71 FR 71340, 71375 (Dec. 8, 2006); 10 CFR 431.294. ''Plug loads'' are those appliances and equipment that are plugged into the power outlets in a building.

[37] ''Plug loads'' are those appliances and equipment that are plugged into the power outlets in a building.

Comment recommended that DOE perform a limited set of sensitivity analyses to determine whether a reasonable estimate of the impacts is feasible and whether such impacts would be significant, given variations in climate, space conditioning system type, and other building loads. (ACEEE, No. 13 at p. 4) Dixie-Narco asserted that the impact would be minimal and that DOE should not attempt to quantify this effect. (Dixie-Narco, No. 14 at p. 5) NFESC recommended that DOE account for the additional electricity attributable to the added heat load on air-conditioning systems in determining what efficiency standard will be cost-effective. (NFESC, No. 15 at p. 5)

Based on these comments, DOE conducted a brief sensitivity analysis of the impact of a beverage vending machine's energy consumption and its magnitude compared to other plug loads in a commercial building, where more than two-thirds of the beverage vending machines are installed. Using the Energy Information Administration (EIA)'s Commercial Building Energy Consumption Survey (CBECS) data,[38] DOE examined 16 commercial building types (i.e., principal building activity (PBA) categories) in which beverage vending machines are typically installed. Annual energy consumption of these machines was calculated, based on 8 kWh of daily electricity consumption and 365 days of operation, which equated to three percent of the total electricity consumption for lighting in a typical commercial building. Based on these findings which suggest that the impact is minimal, DOE has decided to conduct no further analyses regarding the impact of more-efficient beverage vending machines on building space-conditioning loads.

Another question related to the energy use of beverage vending machines is the ''heating mode'' for machines installed outdoors in cold climates. At the Framework public meeting, Royal Vendors stated that a very small number of machines have a heater kit, although these kits do not run much of the time, even in very cold climates such as Alaska (Public Meeting Transcript, No. 8 at p. 211). Therefore, DOE decided that it will not consider the ''heating mode'' to be a significant factor in its energy use analysis.

As discussed above, DOE analyzed two equipment classes of beverage vending machines, Class A and Class B. Although Class A machines may be certified for indoor/outdoor use, there are few Class A machines installed outdoors because of concerns about vandalism. Therefore, DOE assumed Class A machines to be installed indoors only and subject to the constant indoor air temperature and relative humidity conditions of 75 °F/45 percent RH, matching one of the test conditions in the DOE test procedure. Further, based on market data as to the installation of Class B machines and discussions with several beverage vending machine distributors, DOE assumed that 25 percent of these machines are placed outdoors and that the remaining 75 percent of these machines are installed indoors. DOE seeks stakeholder input on this approach, which is identified as Issue 1 under ''Issues on Which DOE Seeks Comment'' in Section IV.E of this ANOPR.

Furthermore, for both Class A and Class B machines, DOE analyzed the three typical sizes (vendible capacities) defined in the engineering analysis (Chapter 5 of the TSD). Each machine has a different refrigerated volume as measured by ANSI/AHAM HRF–1–2004 and shown in Table II.4.

TABLE II.4.—CONFIGURATIONS OF THE BEVERAGE VENDING MACHINES ANALYZED

Configuration	Class A machine			Class B machine		
	Small (A–S–IN)*	Medium (A–M–IN)	Large (A–L–IN)	Small (B–S–IO)	Medium (B–M–IO)	Large (B–L–IO)
Vendible Capacity (number of cans)	270	350	410	450	650	800
Refrigerated Volume (ft^3)	19	31	35	19	24	31

* This nomenclature denotes a combination of equipment class, size, and assumed application. For example, A–S–IN denotes a Class A small machine used indoors only, whereas B–S–IO denotes a Class B small machine that can be installed either indoors or outdoors.

DOE estimated the annual energy consumption for Class A vending machines as the product of the average daily energy consumption from the DOE test procedure indoor test condition of 75 ° F/45 percent RH, and 365 days per year. For Class A machines, the annual energy consumption did not vary by State.

DOE calculated the energy consumed by Class B vending machines using the following relationship:

$$E_{ann} = 25\% \ x \ E_{ann,outdoor} + 75\% \ x \ E_{ann,indoor} \qquad Eq. II.1$$

Where:

E_{ann} = Annual average energy consumption,

$E_{ann,outdoor}$ = Annual average energy consumption for an outdoor machine, and

$E_{ann,indoor}$ = Annual average energy consumption for an indoor machine.

For the 25 percent of the Class B machines located outdoors, DOE developed a spreadsheet-based energy performance model that uses Typical Meteorological Year (TMY2) climate data.[39] DOE created temperature and relative humidity bins with temperatures ranging from 130 °F to −40 °F in 5 °F increments, and percent relative humidity values ranging from 100 percent RH to 0 percent RH in 5 percent RH increments. The model calculates the annual energy consumption of a vending machine at any of the chosen engineering efficiency levels (derived from the engineering

[38] EIA 2003. EIA (Energy Information Administration), 2003, 2003 CBECS Detailed Tables. *http://www.eia.doe.gov/emeu/cbecs/cbecs2003/detailed_tables_2003/detailed_tables_2003.html. Accessed June 14, 2007.*

[39] TMY2 data expresses the annual average weather data for 237 cities in the United States. TMY2 National Renewable Energy Laboratory. *Typical Meterological Years Derived from the 1961–1990 National Solar Radiation Database (1995).* Available at: *http://rrede.nredl.gov/solar/old_data/nsrdb/1961-1990.*

analysis) for a variety of temperatures and relative humidity values. The model calculates the annual energy use for each TMY2 city by stepping through the binned weather data, calculating the daily average energy consumption for the beverage vending machine from the energy performance model for each bin, dividing by 24 to convert to average hourly energy consumption, and multiplying by the number of hours in the bin. The sum of the hourly energy consumption for all bins provides the annual energy consumption.

DOE estimated annual energy consumed by the remaining 75 percent of the Class B machines located indoors as the product of the daily energy consumption calculated at the DOE test procedure indoor test condition of 75 °F/45 percent RH, and 365 days per year.

DOE calculated the average annual energy use for each Class B machine for all 237 TMY2 stations in the United States. DOE mapped each TMY2 station to a certain State, based on its location. Within each State, DOE assigned a relative weight to each TMY2 station, based on the total population of identifiable population centers (cities, towns, other) that can be shown to be most climatically similar to that TMY2 location. The annual energy consumption data for the TMY locations were then weighted to obtain annual energy consumption data for each State.

As described below, DOE developed the annual energy consumption for each equipment class and at each efficiency level for each State in the United States as inputs for the LCC and PBP analyses.

1. Selection of Efficiency Levels for Further Analysis

The engineering analysis considered an efficiency level corresponding to the present market efficiency level (below the Tier 1 efficiency level) which DOE designated as Level 0. DOE then developed up to thirteen efficiency levels for some equipment classes to obtain a range of cost-efficiency relationships in the engineering analysis. For each equipment class, DOE then down-selected only nine efficiency levels to consider in the energy use characterization and subsequent economic analyses. The efficiency levels range from a baseline efficiency level to the max-tech level. As part of that range, DOE selected ENERGY STAR levels (Tier 1 and Tier 2) and intermediate levels that would yield a smooth LCC curve. Table II.5 shows the mapping of the efficiency levels that DOE will use in the further economic analyses of the efficiency levels from the engineering analysis. These nine efficiency levels, chosen for the subsequent economic analyses, the corresponding annual energy consumption figures, and manufacturer selling prices for beverage vending machines determined in the engineering analysis are all inputs to DOE's LCC analysis.

TABLE II.5.—MAPPING OF THE EFFICIENCY LEVELS FOR SUBSEQUENT ECONOMIC ANALYSES TO THE ENGINEERING EFFICIENCY LEVELS

Efficiency levels for LCC and PBP analyses	Engineering efficiency levels for class A machines (all sizes)	Engineering efficiency levels for class B machines (all sizes)
Level 0	Level 0	Level 0.
Level 1 (ENERGY STAR Tier 1) or Baseline Level.	Level 1	Level 1.
Level 2	Level 3	Level 3.
Level 3 (ENERGY STAR Tier 2)	Level 4	Level 4.
Level 4	Level 7	Level 6.
Level 5	Level 8	Level 7.
Level 6	Level 9	Level 9.
Level 7	Level 11	Level 10.
Level 8 (Max Tech)	Level 13	Level 11.

2. Annual Energy Consumption Results

As explained above, DOE assumes that all Class A machines and 75 percent of Class B machines are installed indoors and that 25 percent of Class B machines are located outdoors. To calculate a weighted energy use of Class B machines, DOE added aggregated State-by-State results by using data from each of the 237 TMY2 weather stations to the annual energy consumption of the remaining 75 percent of Class B machines located indoors, in order to determine the total energy consumption of all Class B machines. DOE further aggregated energy consumption at the State level to arrive at the national average energy consumption, using the 2000 Census population data.[40] Table II.6 presents the national average annual energy consumption figures for the three different sizes of Class B machines.

TABLE II.6.—NATIONAL AVERAGE ANNUAL ENERGY CONSUMPTION FOR CLASS B MACHINES, BY EFFICIENCY LEVELS (KWH)

	Level 0 (market baseline)	Level 1 (ENERGY STAR Tier 1)	Level 2	Level 3 (ENERGY STAR Tier 2)	Level 4	Level 5	Level 6	Level 7	Level 8 (Max Tech)
Large (B–L–IO)	4,033	2,244	1,901	1,740	1,598	1,533	1,348	1,336	1,315
Medium (B–M–IO)	3,899	2,108	1,763	1,623	1,488	1,426	1,250	1,240	1,221
Small (B–S–IO)	3,699	1,934	1,589	1,461	1,376	1,214	1,149	1,140	1,125

[40] The U.S. Census Bureau, *2000 Census, http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=01000US&box_head_nbr=GCT-PHI&-context=gct&-ds_name=DEC_2000_SFI_U&-tree_id=4001&-format=US-9.* (Accessed on March 25, 2007.)

Table II.7 shows annual energy consumption for each size of Class A machine. National average energy consumption figures are identical to State energy consumption figures. These national average annual energy consumption figures are used in the subsequent LCC, PBP, NES and rebuttable presumption payback period analyses.

TABLE II.7.—ANNUAL ENERGY CONSUMPTION FOR CLASS A MACHINES, ALL SIZES AND ALL LOCATIONS, BY EFFICIENCY LEVELS (kWH)

Size	Energy use (all locations, kWh)								
	Level 0 (market baseline)	Level 1 (ENERGY STAR Tier 1)	Level 2	Level 3 (ENERGY STAR Tier 2)	Level 4	Level 5	Level 6	Level 7	Level 8 (Max Tech)
Large (A–L–IN)	3,173	2,452	2,229	2,045	1,882	1,790	1,773	1,654	1,586
Medium (A–M–IN)	3,005	2,321	2,102	1,933	1,775	1,692	1,675	1,576	1,510
Small (A–S–IN)	2,796	2,117	1,902	1,737	1,585	1,518	1,502	1,417	1,356

DOE's energy use characterization assumes both that there are no controls limiting display lighting or compressor operation in a beverage vending machine to certain hours of the day and that the display lighting or compressor operation would not be affected by occupancy patterns in the building. However, using occupancy sensors and other controllers might reduce a vending machine's energy requirements during long periods of non-use, such as overnight and weekends. This occupancy controller option is often used when de-lamping a vending machine is not advisable (i.e., when a vending machine does not have a captive audience or when de-lamping results in reduced vending sales revenues). Controllers can either be added on or enabled in certain beverage vending machines. DOE requests comments on the need to incorporate such controls in its energy use characterization analysis and, if so, how to do so in the NOPR analysis. See Issue 2 under ''Issues on Which DOE Seeks Comment'' in Section IV.E of this ANOPR. Chapter 7 of the TSD provides additional details on the energy use characterization.

F. Rebuttable Presumption Payback Periods

A more energy-efficient device will usually cost more to purchase than a device of standard energy efficiency. However, the more-efficient device will usually cost less to operate due to reductions in operating costs (i.e., lower energy bills). The payback period (PBP) is the time (usually expressed in years) it takes to recover the additional installed cost of the more-efficient device through energy cost savings. In considering standard setting for beverage vending machines, sections 325(o)(2)(B)(iii) and (v)(3) of EPCA (42 U.S.C. 6295(o)(2)(B)(iii) and (v)(3)) establish a rebuttable presumption that a standard is economically justified if the Secretary finds that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure * * *.'' (42 U.S.C. 6295(o)(2)(B)(iii)) This rebuttable presumption test is an alternative path to establishing economic justification as compared to consideration of the seven factors set forth in 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII).

To evaluate the rebuttable presumption, DOE estimated the additional cost of a more-efficient, standard-compliant unit, and compared this cost to the value of the energy saved during the first year of operating the equipment. DOE assumed that the increased cost of purchasing a standard-compliant unit includes the cost of installing the equipment for use by the purchaser. DOE calculated the rebuttable presumption PBP, or the ratio of the value of the increased installed price above the baseline efficiency level to the first year's energy cost savings. When this PBP is less than three years, the rebuttable presumption is satisfied; when this PBP is equal to or more than three years, the rebuttable presumption is not satisfied.

DOE calculated rebuttable presumption PBPs based on a distribution of installed costs and energy prices that included seven types of businesses and all 50 States. Unlike the other PBPs calculated in the LCC analysis (see Section II.G.4 of this ANOPR), the rebuttable presumption PBPs do not include maintenance or repair costs.[41] As with the LCC analysis (see Section II.G.2), the baseline efficiency level for the rebuttable presumption calculation is Level 1. From the range of efficiency levels for which cost data was determined in the engineering analysis, DOE selected nine efficiency levels in each equipment class, including the baseline efficiency level, for the LCC and subsequent ANOPR analyses. Chapter 7 of the TSD discusses the selection of these efficiency levels. For each equipment class, DOE calculated the rebuttable presumption PBP at each efficiency level higher than the baseline. Inputs to the PBP calculation are the first seven inputs shown in Table II.9 in Section II.G.2 of this ANOPR.

Table II.8 shows the nationally-averaged rebuttable presumption payback periods calculated for all equipment classes and efficiency levels. Table II.8 also shows the highest efficiency level with a rebuttable presumption payback of less than 3 years for each equipment class.

As is the case in other DOE energy conservation standards rulemakings, while DOE has examined the rebuttable presumption PBPs, it has not determined economic justification for any of the standard levels analyzed based on the ANOPR rebuttable presumption analysis. Instead, when setting candidate standard levels (CSLs), DOE will consider the more detailed analysis of the economic impacts of increased efficiency according to section 325(o)(2)(B)(i) of EPCA. (42 U.S.C. 6295(o)(2)(B)(i))

[41] Energy cost savings are the only costs addressed with respect to rebuttable presumption payback periods. 42 U.S.C. 6295(o)(2)(B)(iii).

TABLE II.8.—REBUTTABLE PRESUMPTION PAYBACK PERIODS BY EFFICIENCY LEVEL AND EQUIPMENT CLASS

Equipment type	Rebuttable presumption payback period (years)								Highest level with PBP <3 years
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8	
B–L–IO	NA	0.7	1.1	1.5	3.6	3.9	4.1	122.9	Level 4.
B–M–IO	NA	0.7	1.1	1.6	3.8	4.1	4.4	112.3	Level 4.
B–S–IO	NA	0.7	1.3	1.8	3.6	4.8	5.1	5.1	Level 4.
A–L–IN	NA	1.1	1.4	1.6	2.1	2.3	6.3	145.4	Level 6.
A–M–IN	NA	1.1	1.5	1.7	2.3	2.5	6.1	347.9	Level 6.
A–S–IN	NA	1.2	1.4	1.7	2.2	2.4	6.1	75.4	Level 6.

G. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on customers. The effects of standards on individual commercial customers include changes in operating expenses (usually lower) and changes in total installed cost (usually higher). DOE analyzed the net effect of these changes for beverage vending machines by calculating the changes in customers' LCCs likely to result from a CSL compared to a base case (no new standards). The LCC calculation considers total installed cost (includes MSP, sales taxes, distribution channel markups, and installation cost), operating expenses (i.e., energy, repair, and maintenance costs), equipment lifetime, and discount rate. DOE performed the LCC analysis from the perspective of the purchaser of a beverage vending machine.

DOE calculated the LCC for all customers as if each would purchase a new beverage vending machine in the year the standard takes effect. The standard takes effect on the future date when it begins to apply to newly-manufactured equipment. Section 135(c)(4) of EPACT 2005 amended EPCA to add new subsections 325(v)(2), (3) and (4) (42 U.S.C. 6295(v)(1), (2) and (3)), which directs the Secretary to issue a final rule for refrigerated bottled or canned beverage vending machines no later than August 8, 2009, with the energy conservation standard levels in the rule applying to all equipment manufactured on or after August 8, 2012. Consistent with EPCA, DOE used these dates in the ANOPR analyses.

DOE based the cost of the equipment on projected costs in 2012, although all dollar values are expressed in 2007$. DOE projected that the cost for equipment in 2012 when expressed in real terms (2007$) would be identical to the cost determined in the engineering analysis. DOE also considered annual energy prices for the life of the beverage vending machine, based on EIA's Annual Energy Outlook 2007 (AEO2007).

DOE also analyzed the effect of changes in operating expenses and installed costs by calculating the PBP of potential standards relative to a base case. The PBP estimates the amount of time it would take the commercial customer to recover the anticipated, incrementally higher purchase expense of more energy-efficient equipment through lower operating costs. Similar to the LCC analysis, the PBP is based on the total installed cost and the operating expenses. However, unlike the LCC, the PBP only considers the first year's operating expenses. Because the PBP does not account for changes in operating expense over time or the time value of money, this calculation is also referred to as a simple PBP. Usually, the benefits of a regulation exceed the costs of that regulation if the service life of the covered equipment is substantially longer than the PBP.

The following discussion provides an overview of the approach and inputs for the LCC and PBP analyses performed by DOE, as well as a summary of the preliminary results generated for the beverage vending machines under consideration in this rulemaking. However, for a more detailed discussion on the LCC and PBP analyses, see Chapter 8 of the ANOPR TSD.

1. Approach

The LCC analysis estimates the impact on commercial customers of potential energy conservation standards for beverage vending machines by calculating the net cost of those machines under two scenarios: (1) A ''base case'' of no new standard; and (2) a ''standards case'' under which beverage vending machines must comply with a new energy efficiency standard. Recognizing that each type of commercial customer who uses a beverage vending machine is unique, DOE analyzed variability and uncertainty by performing the LCC and PBP calculations for seven types of businesses. Six of these typically purchase and install beverage vending machines in their buildings. The seventh business type, which is the most common purchaser of the equipment, is a local bottler or vending machine operator that typically has the machine installed in one of the other six business types, provides vending services, and splits the coin box receipts through a contractual arrangement with the site owner.

Of the six business types analyzed, four have a Principal Building Activity (PBA) category assigned to them in the CBECS data. These four business types analyzed are: (1) Office/healthcare (including a large number of firms engaged in financial and other services, medical and dental offices, and nursing homes); (2) retail (including all types of retail stores and food and beverage service facilities); (3) schools (including colleges and universities and large groups of housing facilities owned by State governments, such as prisons); and (4) ''other'' (including warehouses, hotels/motels, and assembly buildings). The two remaining business types analyzed are manufacturing facilities and military bases that are typically large utility customers and pay industrial rates for their electricity consumption.

Aside from energy, the most important factors influencing the LCC and PBP analyses are related to where the beverage vending machine is installed. These factors include energy prices, installation cost, markup, and sales tax. The LCC analysis used the annual energy consumption determined in the energy use characterization analysis (Chapter 7 of the TSD). Energy consumption calculated using this approach is sensitive to climatic conditions, especially for the vending machines located outdoors. Therefore, energy consumption in the LCC analysis varies by geographical location. At the national level, the LCC analysis explicitly modeled both the uncertainty and the variability in the model's inputs using probability distributions. These are based on the shipment of units to different States, as determined by population weights.

2. Life-Cycle Cost Analysis Inputs

For each efficiency level analyzed, the LCC analysis requires input data for the total installed cost of the equipment, the operating expense, and the discount rate. Table II.9 summarizes the inputs and key assumptions used to calculate the economic impacts to commercial customers of various efficiency levels for each beverage vending machine. A more detailed discussion of the inputs follows.

TABLE II.9.—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LIFE-CYCLE COST ANALYSIS

Input	Description
Baseline Efficiency Level	Energy savings and energy cost savings are compared to a pre-selected baseline efficiency level (in this case Level 1).
Higher Efficiency Levels	Certain number of higher efficiency levels are pre-selected up to the max-tech level for LCC and PBP analyses.
Baseline Manufacturer Selling Price	Price charged by manufacturer to either a wholesaler or large customer for baseline equipment.
Standard-Level Manufacturer Selling Price Increases.	Incremental change in manufacturer selling price for equipment at each of the higher efficiency levels.
Markups and Sales Tax	Associated with converting the manufacturer selling price to a customer price (see Chapter 6 of TSD).
Installation Price	Cost to the customer of installing the equipment. This includes labor, overhead, and any miscellaneous materials and parts. The total installed cost equals the customer equipment price plus the installation price.
Equipment Energy Consumption	Site energy use associated with the use of beverage vending machines, which includes only the use of electricity by the equipment itself.
Electricity Prices	Average commercial electricity price ($/kWh) in each State and for seven classes of commercial and industrial customers, as determined from EIA data for 2003 converted to 2007$.
Electricity Price Trends	Used the *AEO2007* reference case to forecast future electricity prices.
Maintenance Costs	Labor and material costs associated with maintaining the beverage vending machines (e.g., cleaning heat exchanger coils, checking refrigerant charge levels, lamp replacement).
Repair Costs	Labor and material costs associated with repairing or replacing components that have failed.
Equipment Lifetime	Age at which the beverage vending machine is retired from service (estimated to be 14 years).
Discount Rate	Rate at which future costs are discounted to establish their present value to beverage vending machine purchasers.
Rebound Effect	A rebound effect was not taken into account in the LCC analysis.
Analysis Period	Analysis period is the time span over which DOE calculated the LCC (i.e., 2012–2042).

a. Baseline Manufacturer Selling Price

The ''baseline MSP'' is the price manufacturers charge to either a wholesaler/distributor or very large customer for beverage vending machine equipment meeting baseline efficiency levels. The MSP includes a markup that converts the MPC to MSP. DOE developed the baseline MSPs using a cost model (detailed in Chapter 5 of the TSD). MSPs were developed for two equipment classes and three typical sizes within each equipment class.

DOE was not able to identify relative shipments data for equipment classes by efficiency level. For the equipment on which DOE performed a design-option analysis as the basis for the engineering analysis, DOE designated Level 1 as the baseline efficiency level. Level 1 also coincided with the ENERGY STAR Tier 1 level, which is assumed to represent the least efficient equipment likely to be sold in 2012.

b. Increase in Selling Price

The standard-level MSP increase is the change in MSP associated with producing beverage vending machine equipment at higher efficiency levels (or with lower energy consumption). MSP increases are associated with decreasing equipment energy consumption (or higher efficiency) levels through a combination of energy consumption level and design-option analyses. See Chapter 5 of the TSD for details. DOE developed these MSP increases for the two equipment classes.

c. Markups

As discussed earlier, overall markups are based on one of three distribution channels for beverage vending machines. Site owners purchase approximately five percent of equipment from wholesaler/distributors; vending machine operators purchase 27 percent of equipment from wholesaler/distributors; and beverage bottler/distributors purchase 68 percent of equipment directly from manufacturers, based on input received by DOE.

d. Installation Costs

DOE derived installation costs for beverage vending machines from U.S. Bureau of Labor Statistics (BLS) data.[42] BLS provides median wage rates for installation, maintenance, and repair occupations that reflect the labor rates for each State. These data allow DOE to compute State labor cost indices relative to the national average for these occupations. DOE incorporated these cost indices into the analysis to capture variations in installation cost by location. DOE calculated the installation cost by multiplying the number of person-hours by the corresponding labor rate as reported by Foster-Miller Inc.[43] Foster-Miller data were more specific to the beverage vending machine industry and service calls, and were used whenever possible. DOE decided that the installation costs (including overhead and profit) represent the total installation costs for baseline equipment. Further, since data were not available to indicate how installation costs vary by the beverage vending machine class or efficiency, DOE considered installation costs to be fixed and independent of the cost or efficiency of the equipment. Although the LCC spreadsheet allows for alternative scenarios, DOE did not find a compelling reason to change its basic premise for the ANOPR analysis.

As described earlier, the total installed cost is the sum of the equipment purchase price and the installation cost. DOE derived the

[42] Bureau of Labor Statistics, Occupational Employment and Wage Estimates (May 2006). Available at: *http://www.bls.gov/oes_dl.htm.*

[43] Foster-Miller, Inc., *Vending Machine Service Call Redution Using the Vending Miser (2002).*

customer equipment purchase price for any given efficiency level by multiplying the baseline MSP by the baseline markup and adding to it the product of the incremental MSP and the incremental markup. Because MSPs, markups, and the sales tax can take on a variety of values depending on location, the resulting total installed cost for a particular efficiency level will not be a single-point value, but a distribution of values. DOE used a Monte-Carlo analysis, which is a stochastic approach, to determine this distribution of values.

e. Energy Consumption

DOE based its estimate of the annual electricity consumption of beverage vending machines on the energy use characterization described in Section II.E of this ANOPR.

f. Electricity Prices

Electricity prices are necessary to convert electric energy savings into energy cost savings. In its Framework Document, DOE suggested using average commercial and/or industrial electricity prices depending on the purchaser of the beverage vending machine to develop its life-cycle cost analysis. Based on comments made at the Framework public meeting, DOE estimated that about 30 percent of installed beverage vending machines are located at manufacturing facilities with industrial electricity prices.

On this topic, EEI recommended that DOE should use industrial as well as commercial electricity prices in the analysis. (EEI, No. 12 at p. 6) In its analyses, DOE will use average electricity prices for the following types of locations: (1) Industrial buildings; (2) Federal military buildings; and (3) large office, small office, education, and mercantile buildings. These average electricity prices will be determined on a State-by-State basis in order to include regional variations in energy prices, while reducing the overall complexity of the analysis. DOE will use a Monte-Carlo stochastic analysis (using Crystal Ball) to capture the variation of energy prices across the different building types and geographic regions. Because of the wide variation in electricity consumption patterns, wholesale costs, and retail rates across the country, it is important to consider regional differences in electricity prices. DOE used average commercial electricity prices at the State level from the EIA publication, *State Energy Consumption, Price, and Expenditure Estimates.* The latest available prices from this source are for 2006. Because actual prices were available for all of 2006, DOE used the forecasted ratio between 2007 and 2006 national commercial retail electricity prices from *AEO2007* to adjust the 2006 State-level prices to 2007$.

DOE decided to use average electricity prices paid by seven different classes of beverage vending machine customers on a State-by-State basis. DOE also adjusted for different effective prices, since different kinds of businesses typically use electricity in different amounts at different times of the day, week, and year. To make this adjustment, DOE used the 2003 CBECS data set to identify the average prices four of the seven business types paid compared with the average prices all commercial customers paid. Two of the seven business types were manufacturing facilities and military/Federal facilities, which DOE assumed pay industrial electricity prices. DOE used the ratios of prices paid by the four types of businesses to the national average commercial prices seen in the 2003 CBECS as multiplying factors to increase or decrease the average commercial 2006 price data previously developed. Once the electricity prices for the four types of businesses were adjusted, those prices were used in the LCC analysis.

To obtain a weighted-average national electricity price, the prices paid by each business in each State is weighted by the estimated sales of beverage vending machines to each business type. The State/business type weights are the probabilities that a given beverage vending machine unit shipped will be operated with a given electricity price. For evaluation purposes, the prices and weights can be depicted as a cumulative probability distribution. The effective electricity prices range from approximately 4 cents per kWh to approximately 16 cents per kWh. This approach will include regional variations in energy prices and provide for estimated electricity prices suitable for the target market, yet reduce the overall complexity of the analysis. The development and use of State-average electricity prices by business type is described in more detail in Chapter 8 of the TSD.

g. Electricity Price Trends

The electricity price trend provides the relative change in electricity prices for future years out to the year 2042. Estimating future electricity prices is difficult, especially considering that there are efforts in many States throughout the country to restructure the electricity supply industry. DOE applied the *AEO2007* reference case as the default scenario and extrapolated the trend in values from 2020 to 2030 of the forecast to establish prices in 2030 to 2042. This method of extrapolation is in line with methods that EIA uses to forecast fuel prices for the Federal Energy Management Program (FEMP). DOE provides a sensitivity analysis of the life-cycle costs savings and PBP results to future electricity price scenarios using both the *AEO2007* high-growth and low-growth forecasts in Chapter 8 of the TSD. DOE is committed to using the latest available EIA forecast of energy prices in this rulemaking. For the NOPR analysis, DOE expects to use *AEO2008.* Since the Final Rule is expected to be published by August 2009, DOE expects to use AEO2009 in the Final Rule analysis. Prior to issuance of the NOPR, updates of the ANOPR analytical spreadsheets using AEO2008 will be made available on the Web: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/beverage_machines.html.*

h. Repair Costs

The equipment repair cost is the cost to the customer of replacing or repairing failed components in the beverage vending machine. DOE based the annualized repair cost for baseline efficiency equipment on the following equation:

$$RC = k \times EQP/LIFE$$

Where:

RC = repair cost in dollars,
k = fraction of equipment price (estimated to be 0.5),
EQP = baseline equipment price in dollars, and
LIFE = average lifetime of the equipment in years (estimated to be 14 years).

Because data were unavailable on how repair costs vary with equipment efficiency, DOE held repair costs constant as the default scenario for the LCC and PBP analyses.

i. Maintenance Costs

DOE estimated the annualized maintenance costs for beverage vending machines from data provided by Foster-Miller, Inc. (2002). The report by Foster-Miller provides estimates on the person-hours, labor rates, and materials required for routine preventive maintenance of beverage vending machines. DOE adjusted the total annual maintenance cost and used a single figure of $31.37/year (2007$) for preventive maintenance for all beverage vending machine classes. In addition to routine maintenance, industry contacts stated that most beverage vending machines are fully refurbished every three to five years at an average cost of approximately $930. DOE calculated the

annual cost of refurbishment by assuming two refurbishments (one in year 4 and another in year 8) and then annualizing the present value of the cost using the discount rate that applied to the business type assumed to own the beverage vending machine. DOE added the two maintenance components together to produce an overall annual maintenance cost of $165.44 (2007$). Because data are not available for how maintenance costs vary with equipment efficiency, DOE held maintenance costs constant even as equipment efficiency increased. DOE seeks feedback on the frequency of refurbishment cycles, its assumptions regarding constant maintenance costs, and how changes to the machines might affect energy use in the field. Section IV.E of this ANOPR discusses this subject, identified as Issue 3 under ''Issues on Which DOE Seeks Comment.''

j. Lifetime

DOE defines ''lifetime'' as the age when a beverage vending machine is retired from service. Based upon discussions with industry experts and other stakeholders, DOE concluded that a typical equipment lifetime of 14 years is appropriate for beverage vending machines. As described earlier, beverage vending machines are refurbished every three to five years, and they are usually completely replaced after two rounds of refurbishment (by which time they are typically obsolete or physically worn out). Chapter 3 of the TSD, market and technology assessment, contains a discussion of equipment life data and the sources of such data.

k. Discount Rate

The ''discount rate'' is the rate at which future expenditures are discounted to establish their present value. DOE received comments on the development of discount rates for this rulemaking at the Framework public meeting. Specifically, EEI stated that in terms of average cost of capital and discount rates, DOE should account for the rise in U.S. interest rates over the past few years. EEI also stated that DOE should determine how many vending machine owners are small businesses, which may have higher costs of capital and, therefore, higher discount rates. (EEI, No. 12 at p. 7) The following explains DOE's approach to discount rates for this rulemaking in light of these comments.

DOE derived discount rates for the LCC analysis by estimating the cost of capital for companies that purchase beverage vending machines. The cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. For most companies, the cost of capital is the weighted average of the cost to the company of equity and debt financing. DOE estimated the cost of equity financing with the Capital Asset Pricing Model (CAPM), among the most widely used models to estimate such costs. CAPM considers the cost of equity to be proportional to the amount of systematic risk for a company. The cost of equity financing tends to be high when a company faces a large degree of systematic risk and low when the company faces a small degree of systematic risk.

To estimate the weighted average cost of capital (WACC; defined as the weighted average cost of debt and equity financing) of purchasers, DOE used a sample of companies involved in the six ownership categories, according to their type of activity. DOE sought financial information for all of the firms in the full sample involved in the seven types of business drawn from a database of 7,687 U.S. companies on the Damodaran Online Web site.[44] This resulted in a sample of about 6,661 firms. In cases where one or more of the variables needed to estimate the discount rate was missing or could not be obtained, DOE discarded the firm from the analysis. Overall, it discarded about 36 percent of the firms in the full database for this reason, resulting in a final count of 4,240 firms. The WACC approach for determining discount rates accounts for the current tax status of individual firms on an overall corporate basis. DOE did not evaluate the marginal effects of increased costs, and thus depreciation due to more expensive equipment, on the overall tax status.

DOE used the final sample of 4,240 companies to represent beverage vending machines purchasers. For each company in the sample, DOE derived the cost of debt, percent debt financing, and systematic company risk from information on the Damodaran Online Web site. Damodaran estimated the cost of debt financing from the long-term government bond rate (4.39 percent) and the standard deviation of the stock price. DOE then determined the weighted average values for the cost of debt, range of values, and standard deviation of WACC for each category of the sample companies. Deducting expected inflation from the cost of capital provided estimates of real discount rate by ownership category.

The above methodology yielded the following average after-tax discount rates, weighted by the percentage shares of total purchases of beverage vending machines: (1) 5.08 percent for bottlers and distributors; (2) 6.04 percent for manufacturing facilities; (3) 5.07 percent for office and health care businesses; (4) 5.98 percent for retail stores; (5) 2.20 percent for schools and colleges; (6) 2.89 percent for military bases; and (7) 4.98 percent for all other types of businesses.[45]

l. Rebound Effect

A ''rebound effect'' occurs when a piece of equipment that is made more efficient is used more intensively, so that the expected energy savings from the efficiency improvement do not fully materialize. Because beverage vending machines operate on a 24-hour basis to maintain adequate conditions for the merchandise being retailed, a rebound effect resulting from increased refrigeration energy consumption seemed unlikely. Thus, there is no rebound effect to be accounted for in the LCC analysis.

m. Effective Date

For purposes of this discussion, the ''effective date'' is the future date when a new standard becomes operative (i.e., the date by and after which beverage vending machine manufacturers must manufacture equipment that complies with the standard). DOE publication of a final rule in this standards rulemaking is required by August 8, 2009. Pursuant to section 42 U.S.C. 6295(v)(3), as amended by EPACT 2005, the effective date of any new energy conservation standard for beverage vending machines must be three years after the final rule is published. DOE calculated LCC for commercial customers, based upon an assumption that each would purchase the new equipment in the year the standard takes effect.

3. Split Incentive Issue

DOE mentioned the ''split incentive issue'' in the Framework public meeting when discussing distribution channels for beverage vending machines sold directly to the bottler or a vending machine operator. The bottler or the vending machine operator installs these machines at different business sites through a ''location contract,'' maintains and stocks the machine, and receives a certain percentage of the coin-box revenue. The business site owner, in

[44] Damodaran Online, Leonard N. Stern School of Business, New York University. Available at: *http://www.stern.nyu.edu/~adamodar/New_Home_Page/data.html. (Accessed May 23, 2007.)*

[45] These discount rates are what private companies pay as beverage vending machine purchasers. Government agencies use three-percent and seven-percent discount rates for economic calculations.

this case, allows the machine to be placed on-site, receives a percentage of the coin-box revenue and/or other remuneration, and most relevant to this rulemaking, pays the electricity bill. In principle, the business site owner would be willing to accept a lower percentage of revenue for a machine that uses less electricity. However, where it is costly to renegotiate contracts, the incentive to purchase more-efficient machines may be lessened or eliminated. Nonetheless, there may be a growing market for energy-efficient beverage vending machines since environmentally-conscious beverage companies and bottlers are pushing to install energy-efficient machines on-site, and certain business site owners are demanding that energy-efficient machines be installed to reduce electricity costs.

At the Framework public meeting, Coca-Cola stated that it has ''full-service vending'' (a split-incentive) that allows a Coca-Cola bottler to buy the vending machine and give it to an operator. The operator may or may not pay some or all of the energy costs, depending on its contract with the customer. (Public Meeting Transcript, No. 8 at p. 190) Meanwhile, EEI stated that information about distribution channels and machine contracts would be important for the LCC analysis. EEI explained that unless there is a provision in the contract for energy costs, there will be a split incentive for site owners. (EEI, No. 12 at p. 5).

In response, DOE agrees that split incentive is a critical issue to consider in the LCC analysis. DOE will assume that operating cost savings due to energy cost savings are transferred to the owner/operator of the beverage vending machine through the coin-box revenue contract. This assumption not only addresses the split incentive issue but also will result in the highest energy savings for the minimum LCC and the lowest total LCC. DOE will also conduct limited sensitivity analyses of alternate scenarios to explore how the LCC savings might change as the site owner retains some fraction (e.g., 50 percent) of the operating cost savings.

4. Payback Period

The PBP is the amount of time it takes the customer to recover the incrementally higher purchase cost of more energy-efficient equipment as a result of lower operating costs (i.e., through energy cost savings). Payback analysis is a technique used to obtain a rough indication of whether an investment is worthwhile. Numerically, the PBP is the ratio of the increase in purchase cost (i.e., from a less-efficient design to a more-efficient design) to the decrease in annual operating expenditures. This type of calculation is known as a ''simple PBP,'' because it does not take into account other changes in operating expenses over time or the time value of money.

The equation for PBP is:

$$PBP = \Delta IC / \Delta OC$$

Where:

PBP = payback period in years,

ΔIC = difference in the total installed cost between the more-efficient standard level equipment (energy consumption levels 2, 3, etc.) and the baseline (energy consumption level 1) equipment, and

ΔOC = difference in annual operating costs.

PBPs are expressed in years. If the PBP is greater than the life of the equipment, then the increased total installed cost of the more-efficient equipment would not be recovered in reduced operating costs. The PBP thus calculated differs from the rebuttable presumption payback calculation discussed in Section II.F in that it includes repair and maintenance costs, which are part of the annual operating costs.

The data inputs to PBP analysis are the total installed cost of the equipment to the customer for each energy consumption level and the annual (first year) operating costs for each energy consumption level. The inputs to the total installed cost are the equipment price and the installation cost. The inputs to the operating costs are the annual energy cost, the annual repair cost, and the annual maintenance cost. The PBP uses the same inputs as the LCC analysis, except that electricity price trends and discount rates are not required. Since the PBP is a simple (undiscounted) payback, the required electricity cost is only for the year in which a new energy conservation standard is to take effect—in this case, 2012. The electricity price used in the PBP calculation of electricity cost was the price projected for 2012, expressed in 2007$, but not discounted to 2007. Discount rates are not used in the PBP calculation.

PBP is one of the economic indicators that DOE uses when assessing economic impact to a customer. As expressed above, PBP does not take into account the time value of money explicitly (e.g., through a discount factor), the life of the efficiency measure, or changing fuel costs over time. In addition, because PBP takes into account the cumulative energy and first-cost impact of a set of efficiency measures, it can be sensitive to the baseline level assumed. In addition, what is deemed an acceptable payback period can vary. By contrast, when examining LCC savings by efficiency levels, there is generally a maximum LCC savings point (minimum LCC efficiency level) indicative of maximum economic benefit to the customer. The selection of the baseline efficiency level does not effect the identification of the minimum LCC efficiency level, although a baseline efficiency is used when calculating net LCC savings or costs. DOE considers both LCC and PBP as related to the seven factors discussed in Section I.C to determine whether a standard is economically justified and whether the benefits of an energy conservation standard will exceed its burdens to the greatest extent practicable. However, because LCC uses a range of discount rates (that depend on customers' cost of financing), takes into account changing energy prices, and does not require selection of a baseline efficiency level, it is given greater weight in DOE decision-making.

5. Life-Cycle Cost and Payback Period Results

This section presents the LCC and PBP results for the energy consumption levels analyzed for this ANOPR. While both types of indicators of cost-effectiveness will be considered by DOE, greater weight is usually given to the LCC savings results because they account for customer discount rates and changing energy prices. Because the values of most inputs to the LCC analysis are uncertain, DOE represents them as a distribution of values rather than a single-point value. Thus, DOE derived the LCC results also as a distribution of values. For example, the difference in LCC for the different efficiency levels from the baseline efficiency level (Level 1 in this case) can be provided by percentiles of distribution of values as shown in Table II.10.

Chapter 8 and Appendix F of the TSD provide a summary of the change in LCC from the baseline efficiency level (Level 1 in this case) by percentile groupings of the distribution of results for each equipment class. Table II.10 provides an example of such LCC changes for a portion of one equipment class (B–L–IO). Table II.10 also shows the mean LCC savings and the percent of units with LCC savings at each efficiency level.

TABLE II.10.—DISTRIBUTION OF LIFE-CYCLE COST SAVINGS FROM A BASELINE LEVEL (LEVEL 1) BY EFFICIENCY LEVEL FOR THE CLASS B LARGE INDOOR/OUTDOOR (B–L–IO) EQUIPMENT CLASS

Efficiency level	Decrease in LCC from baseline (level 1) shown by percentiles of the distribution of results (2007$)											Mean savings	Percent of units with LCC savings
	0%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%		
Level 2	$32	$123	$149	$175	$200	$223	$251	$279	$314	$374	$693	$239	100
Level 3	31	158	198	236	271	306	347	389	440	529	978	329	100
Level 4	17	174	224	272	318	362	415	468	535	649	1,215	392	100
Level 5	−83	65	121	167	218	265	325	375	448	568	1,189	298	97
Level 6	−123	59	129	187	252	311	386	451	542	692	1,494	352	97
Level 7	−136	45	117	175	240	300	377	441	533	686	1,501	341	95
Level 8	−1,304	−1,115	−1,045	−989	−935	−892	−833	−766	−672	−524	339	849	1

The following example explains how to interpret the information in Table II.10. The row concerning Efficiency Level 4 in Table II.10 (row 3) shows that the minimum change in LCC for this Efficiency Level for B–L–IO equipment is a savings of $17 (zero percentile column). In other words, all beverage vending machines of this type would have an LCC savings at Efficiency Level 4. For 90 percent of the cases studied (90th percentile), the change in LCC is a reduction of $649 or less. The largest reduction in LCC is $1,215 (100th percentile). The mean change in LCC is a net savings of $392. The last column shows that 100 percent of the sample machines have LCC savings (i.e., reductions in LCC greater than zero) when compared to the baseline efficiency level.

Table II.11 provides the national average life-cycle cost savings calculated for each efficiency level when compared to the baseline efficiency (Level 1) for all three machine sizes in each of the two equipment classes. Review of Table II.11 shows that most of the efficiency levels analyzed generated national average life-cycle cost savings compared with the baseline efficiency level.

TABLE II.11.—AVERAGE LIFE-CYCLE COST SAVINGS FROM A BASELINE EFFICIENCY LEVEL (LEVEL 1) BY EFFICIENCY LEVEL AND EQUIPMENT CLASS

Equipment class	National average LCC savings (2007$)							
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8
B–L–IO	0	239	329	392	298	352	341	−849
B–M–IO	0	240	313	370	272	320	307	−779
B–S–IO	0	238	296	318	290	253	238	−683
A–L–IN	0	148	259	348	373	369	194	−774
A–M–IN	0	144	242	326	343	338	187	−722
A–S–IN	0	139	238	316	326	319	171	−574

DOE seeks feedback on the validity of selecting Level 1 (which is the same level as ENERGY STAR Tier 1) as the baseline for the LCC analysis. Since more-efficient equipment is available in the market, DOE seeks input on whether a distribution of efficiencies should be used for the LCC analysis baseline instead of a single efficiency level, and if so, what data could be used to populate this distribution. Section IV.E of this ANOPR discusses this subject, identified as Issue 4 under ''Issues on Which DOE Seeks Comment.''

Table II.12 provides summary PBP results for each efficiency level for B–L–IO equipment as an example. Results are summarized for PBP by percentile groupings of the distribution of results. The chart also shows the mean PBP for each efficiency level.

TABLE II.12.—SUMMARY OF PAYBACK PERIOD RESULTS FOR CLASS B, LARGE INDOOR/OUTDOOR (B–L–IO) EQUIPMENT

Efficiency level	Payback period in years shown by percentiles of the distribution of results											Mean PBP
	0%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%	
Level 2	0.3	0.4	0.5	0.6	0.6	0.7	0.7	0.8	0.9	1.1	1.6	0.7
Level 3	0.4	0.7	0.7	0.9	1.0	1.0	1.1	1.2	1.4	1.6	2.4	1.1
Level 4	0.5	0.9	1.0	1.2	1.3	1.4	1.5	1.7	1.9	2.3	3.5	1.5
Level 5	1.1	2.0	2.3	2.7	3.0	3.3	3.6	4.1	4.7	5.6	9.7	3.6
Level 6	1.1	2.2	2.5	2.9	3.3	3.6	3.9	4.4	5.1	6.2	10.9	3.9
Level 7	1.2	2.3	2.6	3.1	3.4	3.8	4.1	4.7	5.4	6.5	11.8	4.1
Level 8	6.6	18.2	26.0	37.2	55.5	85.5	100.0	100.0	100.0	146.6	4,808.0	122.9

Table II.13 provides the national average payback calculated for each efficiency level when compared to the baseline efficiency level (Level 1) for all three machine sizes of the two equipment classes. Table II.13 also shows the percentage of units that would have PBPs of less than three years (i.e., the rebuttable presumption

PBP for economic justification under 42 U.S.C. 6295(o)(2)(B)(iii)). The results of the analysis show that purchases of more-efficient machines would result in PBPs (when compared to the purchase of baseline efficiency units) of about six years or less (often substantially less) for all but the most efficient machines analyzed for both equipment classes.

TABLE II.13.—NATIONAL AVERAGE PAYBACK PERIODS BY EFFICIENCY LEVEL AND EQUIPMENT CLASS

Equipment Class	National average payback period (years)							
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8
B–L–IO	NA	0.7	1.1	1.5	3.6	3.9	4.1	122.9
B–M–IO	NA	0.7	1.1	1.6	3.8	4.1	4.4	112.3
B–S–IO	NA	0.7	1.3	1.8	3.6	4.8	5.1	198.0
A–L–IN	NA	1.1	1.4	1.6	2.1	2.3	6.3	145.4
A–M–IN	NA	1.1	1.5	1.7	2.3	2.5	6.1	347.9
A–S–IN	NA	1.2	1.4	1.7	2.2	2.4	6.1	75.4
Percent of Units With Payback Period of Less Than Three Years								
B–L–IO	NA	100	100	99	39	35	25	0
B–M–IO	NA	100	100	99	37	25	23	0
B–S–IO	NA	100	100	93	39	21	19	0
A–L–IN	NA	100	99	99	87	81	3	0
A–M–IN	NA	100	99	97	83	77	5	0
A–S–IN	NA	100	99	99	85	77	5	0

The PBPs shown in Table II.13 and the rebuttable PBPs shown in Table II.8 account for the cumulative impact of all technologies used in a design option to reach a specific energy efficiency level when compared to the baseline equipment. Every design option is made up of a mix of technologies, some of which may have relatively short PBPs and others that may have relatively longer PBPs, if considered separately. For this reason, the choice of baseline efficiency level affects the PBP for more-efficient machines. The LCC spreadsheet allows the user to select alternate baseline efficiency levels for each equipment class and to calculate the LCC savings and PBP for all higher levels compared to the selected baseline. See Chapter 8 and Appendix F of the TSD for additional details on the LCC and PBP analyses.

H. Shipments Analysis

This section presents DOE's shipments analysis, which is an input to the NIA (Section II.I) and MIA (Section II.K). DOE will undertake revisions to the NIA and conduct the final MIA after the ANOPR is published, and then report the results of both in the NOPR.

The results of the shipments analysis are driven primarily by historical shipments data for the two equipment classes of beverage vending machines under consideration. The model estimates that, in each year, equipment in the existing stock of beverage vending machines either ages by one year or is worn out and replaced. In addition, new equipment can be shipped into new commercial building floor space, and old equipment can be removed through demolitions. DOE chose to analyze all efficiency levels analyzed in the LCC in the NIA. Because DOE is assessing impacts and presuming each level analyzed represents a possible standard level, DOE refers to the efficiency levels analyzed in the NIA as candidate standard levels (CSLs). DOE determined shipments forecasts for all of the CSLs analyzed in the NIA and NPV analysis.

According to an analysis of the beverage vending machine market,[46] there were about 3.67 million beverage vending machines in the United States in 2005. Industry estimates that about 5 percent of these units are Class A machines intended for indoor use only, while 95 percent are Class B machines intended for either indoor or outdoor use. Annual shipments have decreased from about 338,000 in 2000 to less than 100,000 in 2006. DOE estimates that total 2006 shipments were about 67,000 units. The industry estimates that about 10 percent of units shipped were Class A units, while 90 percent of units shipped are Class B machines intended for either indoor or outdoor use. (NAMA, No. 17 at p. 3).

DOE was not able to locate any market data concerning shipments by machine size (i.e., vendible capacity); therefore, the shipments analysis focused on the three sizes (small, medium, and large) believed to be typical and which were analyzed in the preceding LCC and PBP analyses. DOE assumed that each size is about one-third of the market for Class A units and translated the three sizes to the corresponding vendible capacity. Under this approach, the large-size Class A machine would correspond to having a vendible capacity of 410 12-ounce cans, the medium-size Class A machine would have a capacity of 350 cans, and the small-size Class A machine would have a capacity of 270 cans. Similarly, DOE assumed that each size is about one-third of the market for Class B units. Under this approach, the large-size Class B machine would have a vendible capacity of 800 cans, the medium-size Class B machine would have a capacity of 650 cans, and the small-size Class B machine would have a capacity of 450 cans.

Because several different types of businesses own beverage vending machines and use them in a variety of locations, machines are divided into several market segments. Table II.14 gives the business locations and the approximate size of the market segments from 2002 to 2005.

[46] Automatic Merchandiser, *State of the Vending Industry Report* (August 2006). Available at: *www.AMonline.com.*

TABLE II.14.—MARKET SEGMENTS FOR THE BEVERAGE VENDING MACHINES (2002–2005)

Business location	Percent of machines	Ownership	Percent of machines
Manufacturing	30.4	Bottlers and Vendors	75.0
Offices	23.1	Business-Owned	25.0
Retail	13.6	Manufacturing	7.6
Schools/Colleges	13.0	Offices and Health Care	7.3
Health Care	6.1	Retail, Restaurants, Bars, and Clubs	4.1
Hotels/Motels	3.0	Schools, Colleges, and Public Facilities (including correctional).	3.8
Restaurants/Bars/ Clubs	2.6	Military Bases	0.5
Correctional Facilities	2.3	Other (including hotels/motels)	1.8
Military Bases	1.9	Subtotal, Business Owned	25.0
Other	4.0		
Total	100.0	Total	100.0

Source: State of the Vending Industry (2006).

Table II.15 shows the forecasted shipments of the three typical sizes of beverage vending machines for Class A and Class B units for selected years, and cumulatively, between 2012 and 2042. As equipment purchase price increases with higher efficiency levels, a drop in shipments could occur relative to the base case. On the other hand, as annual energy consumption is reduced, equipment sales could increase due to more frequent installations and use of beverage vending machines by retailers. DOE has no information by which to calibrate either such relationship. Therefore, although the spreadsheet allows for changes in projected shipments in response to efficiency level increases or energy consumption level decreases, for the ANOPR analysis, DOE presumed that the shipments would not change in response to the changing CSLs. Table II.15 also shows the cumulative shipments for the 31-year period between 2012 and 2042 for all beverage vending machines. Because there has been a decrease in shipments from 2000 to 2006 and as more and more units are retired, there has to be an increase in future shipments to replenish the existing stock of equipment. Chapter 9 of the TSD provides additional details on the shipments analysis.

TABLE II.15.—FORECASTED SHIPMENTS FOR BEVERAGE VENDING MACHINES (BASELINE EFFICIENCY, LEVEL 1)

Equipment class	Year (thousands of units shipped)								
	2012	2015	2020	2025	2030	2035	2040	2042	Cumulative shipments (2012–2042)
A–L–IN	7.7	7.6	7.9	8.3	8.8	9.2	9.7	9.9	265.9
A–M–IN	7.7	7.6	7.9	8.3	8.8	9.2	9.7	9.9	265.9
A–S–IN	7.7	7.6	7.9	8.3	8.8	9.2	9.7	9.9	265.9
B–L–IO	77.6	77.0	79.8	84.2	88.8	93.4	98.4	100.5	2,688.3
B–M–IO	77.6	77.0	79.8	84.2	88.8	93.4	98.4	100.5	2,688.3
B–S–IO	77.6	77.0	79.8	84.2	88.8	93.4	98.4	100.5	2,688.3

I. National Impact Analysis

The NIA assesses cumulative national energy savings (NES) and the cumulative national economic impacts of candidate standard levels. The analysis measures economic impacts using the NPV metric (i.e., future amounts discounted to the present) of total commercial customer costs and savings expected to result from new standards at specific efficiency levels. For a given CSL, DOE calculated the NPV, as well as the NES, as the difference between a base-case forecast and the standards-case forecasts. Chapter 10 of the TSD provides additional details on the national impacts analysis for beverage vending machines.

For each year of the analysis, the beverage vending machine stock is composed of units shipped in previous years (or vintages). Each vintage has a characteristic distribution of efficiency levels. DOE first determined the average energy consumption of each vintage in the stock accounting for all efficiency levels in that vintage. The national annual energy consumption is then the product of the annual average energy consumption per beverage vending machine at a given vintage and the number of beverage vending machines of that vintage in the stock for the particular year. This approach accounts for differences in unit energy consumption from year to year. Annual energy savings are calculated for each standard level by subtracting national energy consumption for that standard level from that calculated for the baseline. Cumulative energy savings are the sum of the annual NES over the period of analysis.

In a similar fashion, DOE tracks the first costs for all equipment installed at each efficiency level for each vintage. It also tracks the annual operating cost (sum of the energy, maintenance, and repair costs) by vintage for all equipment remaining in the stock for each year of the analysis. DOE then calculates the net economic savings each year as the difference between total operating cost savings and increases in the total installed costs (which consist of manufacturer selling price, sales tax, and installation cost). The NPV is the annual net cost savings calculated for

each year, discounted to the year 2012, and expressed in 2007$. Cumulative NPV savings reported are the sum of the annual NPV over the analysis period.

1. Approach

Over time, in the standards case, more-efficient equipment gradually replaces less-efficient equipment. This affects the calculation of both the NES and NPV, both of which are a function of the total number of units in use and their efficiencies and thus depend on annual shipments and the lifetime of equipment. Both calculations start by using the estimate of shipments and the quantity of units in service, which are derived from the shipments model. As more-efficient beverage vending machines gradually replace less-efficient ones, the energy per unit of capacity that beverage vending machines in service use gradually decreases in the standards case relative to the base case, leading to an estimate of NES.

To estimate the total energy savings for each candidate efficiency level, DOE first calculated the national site energy consumption [47] for beverage vending machines each year, beginning with the expected effective date of the standards (i.e., 2012). DOE did this calculation for both the base-case forecast and the standards-case forecast. Second, DOE determined the annual site energy savings, which is the difference between site energy consumption in the base case and in the standards case. Third, DOE converted the annual site energy savings into the annual amount of energy saved at the source of electricity generation (the source energy). Then, DOE summed the annual source energy savings from 2012 to 2042 to calculate the total NES for that period. DOE performed these calculations for each CSL.

2. Base-Case and Standards-Case Forecasted Efficiencies

A key component of DOE's estimates of NES and NPV are the energy efficiencies for shipped equipment that it forecasts over time for the base case (without new standards) and for each of the standards cases. The forecasted efficiencies represent the distribution of energy efficiency of the equipment under consideration that is shipped over the forecast period (i.e., from the assumed effective date of a new standard to 30 years after the standard becomes effective). Because key inputs to the calculation of the NES and NPV depend on the estimated efficiencies, they are of great importance to the analysis. In the case of the NES, the per-unit annual energy consumption is a direct function of efficiency. Regarding the NPV, the per-unit total installed cost and the per-unit annual operating cost both depend on efficiency. The per-unit total installed cost is a direct function of efficiency. Increased efficiency results in reduced energy consumption which results in reduced energy costs. However, the maintenance cost portion of the operating cost may go up and hence, the per-unit annual operating cost is an indirect function of the equipment efficiency.

The annual per-unit energy consumption is the average energy consumed by a beverage vending machine in a year as determined in the energy use characterization (see Chapter 7 of the TSD). The annual energy consumption is directly tied to the efficiency of the unit. DOE determined annual forecasted market shares by efficiency level that, in turn, enabled a determination of shipment-weighted annual national average energy consumption values. At the Framework public meeting, several manufacturers and ACEEE offered their estimates of shipments of new beverage vending machines that would meet ENERGY STAR levels by 2012. ACEEE also stated that virtually 100 percent of all beverage vending machines will meet Tier 1 levels, and it further expects that 100 percent of the indoor-outdoor zone-cooled (Class B) machines would meet Tier 2 levels. (ACEEE, No. 13 at p. 4) Dixie-Narco estimated that 100 percent of new equipment would meet Tier 1, and about 75 percent would meet Tier 2 levels in 2012. (Dixie-Narco, No. 14 at p. 7). Based on these comments, DOE assumed for purposes of its analyses that 100 percent of beverage vending machine shipments will meet ENERGY STAR Tier 1 level and that about 55 percent of shipments will meet Tier 2 level by 2012.

Because no data were available on market shares broken down by efficiency level, DOE developed estimates. First, DOE converted 2005 shipment information by equipment class into market shares by equipment class, and then adapted a cost-based method similar to that used in the NEMS to estimate market shares for each equipment class by efficiency level. This cost-based method relied on cost data developed in the engineering and life-cycle cost analyses, as well as economic purchase criteria data taken directly from NEMS. From those market shares and shipment projections, DOE developed the future efficiency scenarios for a base case (i.e., without new standards) and for various standards cases (i.e., with new standards).

DOE developed base-case efficiency forecasts based on the estimated market shares by equipment class and efficiency level. Because there are no historical data to indicate how equipment efficiencies or relative equipment class preferences have changed over time, DOE assumed that forecasted market shares would remain frozen at the 2012 efficiency level until the end of the forecast period (30 years after the effective date or 2042). Realizing that this prediction likely overstates the estimates of savings associated with these efficiency standards, DOE seeks comment on this assumption and the potential significance of the overestimate. In particular, DOE requests data that would help characterize the likely increases in efficiency that would occur over the 30-year modeling period in absence of a standard.

For its estimate of standards-case forecasted efficiencies, DOE used a ''roll-up'' scenario to establish the market shares by efficiency level for the year that standards become effective (i.e., 2012). Information available to DOE suggests that equipment shipments with efficiencies in the base case that did not meet the standard level under consideration would roll up to meet the new standard level. Also, DOE assumed that all equipment efficiencies in the base case that were above the standard level under consideration likely would not be affected.

DOE seeks feedback on how it predicts base-case and standards-case efficiencies, and how standards affect efficiency distributions. Section IV.E of this ANOPR discusses this subject, identified as Issue 5 under ''Issues on Which DOE Seeks Comment.'' DOE also seeks feedback on whether higher standard levels in specific equipment classes are likely to cause beverage vending machine customers to shift to less-efficient equipment classes. Section IV.E of this ANOPR discusses this subject, identified as Issue 6 under ''Issues on Which DOE Seeks Comment.''

3. National Impact Analysis Inputs

DOE used the difference in shipments by equipment efficiency level between the base case and standards cases to determine the reduction in per-unit annual energy consumption that could result from new standards. The beverage vending machine stock in a given year is the total number of beverage vending machines shipped from earlier years that survive in the given year. The NES

[47] ''Site energy'' is the energy directly consumed by the units in operation.

spreadsheet model tracks the total number of beverage vending machines shipped each year. For purposes of the ANOPR NES and NPV analyses, DOE assumed that retirements follow a Weibull form of statistical distribution with a 14-year average lifetime for beverage vending machines. Retirements for any given vintage build to about eight percent per year by year 7, then tail off gradually to less than one percent per year by year 20. Retired units are replaced until 2042. For units shipped in 2042, any units still remaining at the end of 2062 are replaced.

The site-to-source conversion factor is the multiplicative factor used for converting site energy consumption (expressed in kWh) into primary or source energy consumption (expressed in quads (quadrillion Btu)). DOE used annual site-to-source conversion factors based on U.S. average values for the commercial sector, calculated from *AEO2007*, Table A5. The average conversion factors vary over time, due to projected changes in electricity generation sources (i.e., the power plant types projected to provide electricity to the country).

To estimate NPV, DOE calculated the net impact each year as the difference between total operating cost savings (including electricity, repair, and maintenance cost savings) and increases in total installed costs (consisting of MSP, sales taxes, distribution channel markups, and installation cost). DOE calculated the NPV of each CSL over the life of the equipment using three steps. First, DOE calculated the difference between the equipment costs under each CSL and the base case to determine the net equipment cost increase resulting from each CSL. Second, DOE calculated the difference between the base-case operating costs and the operating costs at each CSL to determine the net operating cost savings from each CSL. Third, DOE calculated the difference between the net operating cost savings and the net equipment cost increase to determine the net savings (or expense) for each year. DOE then discounted the annual net savings (or expenses) for beverage vending machines purchased on or after 2012 to 2007$, and summed the discounted values to arrive at the NPV of a CSL. An NPV greater than zero shows net savings (i.e., the CSL would reduce overall customer expenditures relative to the base case in present-value terms). An NPV less than zero indicates that the CSL would result in a net increase in customer expenditures in present-value terms. Table II.16 summarizes the NES and NPV inputs to the NES spreadsheet model, and briefly describes the data source for each input.

TABLE II.16.—NATIONAL ENERGY SAVINGS AND NET PRESENT VALUE INPUTS

Input data	Description
Shipments	Annual shipments from shipments model (see Chapter 9 of the TSD, Shipments Analysis).
Effective Date of Standard	2012.
Base-Case Efficiencies	Distribution of base-case shipments by efficiency level.
Standards-Case Efficiencies	Distribution of shipments by efficiency level for each standards case. Standards-case annual market shares by efficiency level remain constant over time for the base case and each standards case.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy consumption level per unit, which are established in the Energy Use Characterization (Chapter 7 of the TSD).
Total Installed Cost per Unit	Annual weighted-average values are a function of energy consumption level (see Chapter 8 of the TSD).
Repair Cost per Unit	Annual weighted-average values increase with manufacturer's cost level (see Chapter 8 of the TSD).
Maintenance Cost per Unit	Annual weighted-average value equals $165.44 (see Chapter 8 of the TSD).
Escalation of Electricity Prices	EIA *AEO2007* forecasts (to 2030) and extrapolation beyond 2030 (see Chapter 8 of the TSD).
Electricity Site-to-Source Conversion	Conversion varies yearly and is generated by DOE/EIA's NEMS * model (a time-series conversion factor that includes electric generation, transmission, and distribution losses).
Discount Rate	3% and 7% real.
Present Year	Future costs are discounted to 2008.
Rebound Effect	As explained in the LCC inputs section, DOE does not anticipate unit energy consumption rebounding above the levels used in the LCC analysis and passed to the NIA analysis. Further, the shipments model develops shipment projections in order to meet historical market saturation levels. The shipment model does not further adjust shipments as a function of unit energy consumption levels, because DOE has no information by which to calibrate such a relationship.

* Chapter 13 (utility impact analysis) and Chapter 14 (environmental assessment) provide more detail on NEMS.

4. National Impact Analysis Results

Table II.17 presents the cumulative NES results for the CSLs analyzed for three sizes of each equipment class of beverage vending machines. Results are cumulative to 2042 and are shown as primary energy savings in quads. Inputs to the NES spreadsheet model are based on weighted-average values, yielding results that are discrete point values, rather than a distribution of values as in the LCC analysis. DOE based all the results on electricity price forecasts from the *AEO2007* reference case. The range of overall cumulative energy impacts for standards above the baseline efficiency level (Level 1) is from 0.006 quad (Class A machines) and 0.048 quad (Class B machines) for a standard established at Level 2, to 0.036 quad (Class A machines) and 0.351 quad (Class B machines) at the max tech efficiency level (Level 8).

TABLE II.17.—CUMULATIVE NATIONAL ENERGY SAVINGS FOR BEVERAGE VENDING MACHINES (2012–2042) (QUADS)

Equipment class	National energy savings (Quads) by candidate standard level						
	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8
Class A	0.006	0.011	0.018	0.023	0.023	0.031	0.036

TABLE II.17.—CUMULATIVE NATIONAL ENERGY SAVINGS FOR BEVERAGE VENDING MACHINES (2012–2042) (QUADS)—Continued

Equipment class	National energy savings (Quads) by candidate standard level						
	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8
Class B	0.048	0.106	0.181	0.222	0.234	0.300	0.351

Below are the NPV results for the CSLs DOE considered for the three sizes of each of the two equipment classes of beverage vending machines. Results are cumulative and shown as the discounted value at seven percent of these savings in present dollar terms. The present value of increased total installed costs is the total installed cost increase (i.e., the difference between the standards case and base case), discounted to 2007, and summed over the time period in which DOE evaluates the impact of standards (i.e., from the effective date of standards, 2012 to 2062 when the last beverage vending machine is retired).

Under the NPV analysis, savings represent decreases in operating costs (including electricity, repair, and maintenance) associated with the higher energy efficiency of beverage vending machines purchased in the standards case compared to the base case. Total operating cost savings are the savings per unit multiplied by the number of units of each vintage (i.e., the year of manufacture) surviving in a particular year. The beverage vending machine consumes energy and must be maintained over its entire lifetime. For units purchased in 2042, the operating cost includes energy consumed and maintenance and repair costs incurred until the last unit retires from service in 2062.

Table II.18 shows the NPV results for the CSLs for beverage vending machines based on a seven-percent discount rate. DOE based all results on electricity price forecasts from the *AEO2007* reference case. Appendix H of the TSD provides detailed results showing the breakdown of the NPV into national equipment costs and national operating costs. At a seven-percent discount rate, the maximum national NPV benefits calculated for different CSL scenarios above the baseline was about $30 million for Class A machines and about $280 million for Class B machines.

TABLE II.18.—CUMULATIVE NET PRESENT VALUE RESULTS BASED ON A SEVEN-PERCENT DISCOUNT RATE (BILLION 2007$) *

Equipment class	Standard level						
	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8
Class A	0.009	0.018	0.028	0.030	0.027	(0.009)	(0.221)
Class B	0.079	0.171	0.269	0.280	0.264	(0.081)	(1.916)

* Values in parentheses indicate negative NPV.

Table II.19 provides the NPV results based on the three-percent discount rate and electricity price forecasts from the *AEO2007* reference case. Appendix H of the TSD provides detailed results showing the breakdown of the NPV into national equipment costs and national operating costs based on a three-percent discount rate. At this rate, the maximum overall NPV benefits calculated for different CSL scenarios above the assumed baseline was $80 million for Class A machines and $764 million for Class B machines.

TABLE II.19.—CUMULATIVE NET PRESENT VALUE RESULTS BASED ON A THREE-PERCENT DISCOUNT RATE (BILLION 2007$) *

Equipment class	Standard level						
	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8
Class A	0.021	0.046	0.072	0.080	0.079	0.010	(0.419)
Class B	0.204	0.443	0.709	0.764	0.741	0.085	(3.654)

* Values in parentheses indicate negative NPV.

As discussed previously in Section II.E, roughly 25 percent of the Class B machines are used outdoors, and DOE assumes that all Class A machines are used indoors. To be thorough, DOE developed analytical tools with the capability of separately analyzing Class B machines certified for indoor use only and Class A machines certified for indoor/outdoor use. However, DOE was not able to locate any sales data for these two equipment markets, so sales are assumed to be zero and DOE did not report LCC or NIA results separately for these equipment markets.

J. Life-Cycle Cost Sub-Group Analysis

The LCC sub-group analysis evaluates impacts of standards on identifiable groups of customers, such as customers of different business types that may be disproportionately affected by a national energy conservation standards level. In the NOPR phase of this rulemaking, DOE will analyze the LCCs and PBPs for these customers, and determine whether they would be adversely affected by any of the CSLs.

Also, DOE plans to examine variations in energy prices and energy use that might affect the NPV of a standard to customer sub-populations. To the extent possible, DOE will obtain estimates of the variability of each input parameter and consider this variability in the calculation of customer impacts.

Variations in energy use for a particular equipment class may depend on factors such as climate and type of business.

DOE will determine the effect on customer sub-groups using the LCC spreadsheet model. The standard LCC analysis includes various customer types that use beverage vending machines. DOE can analyze the LCC for any sub-group, such as a particular type of school or institution, by using the spreadsheet model and sampling only that sub-group. Section II.G explains the details of this model. DOE will be especially sensitive to purchase price increases (''first-cost'' increases) to avoid negative impacts on identifiable population groups such as small businesses (*i.e.*, those with low annual revenues) that may not be able to afford a significant increase in the price of beverage vending machines. Some of these customers may retain equipment past its useful life. This older equipment is generally less efficient, and its efficiency may deteriorate further if it is retained beyond its useful life. Large increases in first cost also could preclude the purchase and use of equipment altogether, resulting in a potentially large loss of utility to the customer.

Although DOE does not know business income and annual revenues for the types of businesses analyzed in the LCC analysis, the floor space occupied by a business may be an indicator of annual income. If this proves true, DOE can perform sub-group analyses on smaller businesses. DOE can also use SBA data for businesses with 500 or fewer employees as a proxy for ''smaller businesses.''

K. Manufacturer Impact Analysis

The purpose of the manufacturer impact analysis is to identify the likely impacts of energy conservation standards on manufacturers. DOE has begun and will continue to conduct this analysis with input from manufacturers and other interested parties and apply this methodology to its evaluation of standards. DOE will also consider financial impacts and a wide range of quantitative and qualitative industry impacts that might occur following the adoption of a standard. For example, a particular standard level adopted by DOE could require changes to beverage vending machine manufacturing practices. DOE will identify and understand these impacts through interviews with manufacturers and other stakeholders during the NOPR stage of its analysis.

DOE announced changes to its process for the manufacturer impact analysis through a report submitted to Congress on January 31, 2006 (as required by section 141 of EPACT 2005), entitled ''Energy Conservation Standards Activities.'' Previously, DOE did not report any manufacturer impact analysis results during the ANOPR phase; however, under this new process, DOE has collected, evaluated, and reported preliminary information and data in the ANOPR (see Section II.K.6 of this ANOPR). Such preliminary information includes the anticipated conversion capital expenditures by efficiency level and the corresponding anticipated impacts on jobs. DOE solicited this information during the ANOPR engineering analysis manufacturer interviews and reported the results in the preliminary manufacturer impact analysis (see Chapter 12 of the TSD).

DOE conducts the manufacturer impact analysis in three phases, and then tailors the analytical framework based on public comments. In Phase I, DOE creates an industry profile to characterize the industry and conducts a preliminary manufacturer impact analysis to identify important issues that require consideration. The ANOPR TSD presents results of the Phase I analysis. In Phase II, DOE prepares an industry cash flow model and an interview questionnaire to guide subsequent discussions. In Phase III, DOE interviews manufacturers and assesses the impacts of standards both quantitatively and qualitatively. DOE uses the Government Regulatory Impact Model (GRIM) to assess industry and sub-group cash flow and net present value, and then assesses impacts on competition, manufacturing capacity, employment, and regulatory burden based on manufacturer interviews. The NOPR TSD presents results of the Phase II and Phase III analyses. For more detail on the manufacturer impact analysis, see Chapter 12 of the TSD.

1. Sources of Information for the Manufacturer Impact Analysis

Many of the analyses described above provide input data for the MIA. Such information includes manufacturing costs and prices from the engineering analysis, retail price forecasts, and shipments forecasts. DOE will supplement this information with company financial data and other information gathered during manufacturer interviews. This interview process plays a key role in the manufacturer impact analysis because it allows interested parties to privately express their views on important issues. To preserve confidentiality, DOE aggregates these perspectives across manufacturers, creating a combined opinion or estimate for DOE. This process enables DOE to incorporate sensitive information from manufacturers in the rulemaking process without specifying which manufacturer provided a certain set of data.

DOE conducts detailed interviews with manufacturers to gain insight into the range of potential impacts of standards. During the interviews, DOE typically solicits both quantitative and qualitative information on the potential impacts of efficiency levels on sales, direct employment, capital assets, and industrial competitiveness. DOE prefers interactive interviews, rather than written responses to a questionnaire, because DOE can clarify responses and identify additional issues. Before the interviews, DOE circulates a draft document showing the estimates of the financial parameters based on publicly-available information. DOE solicits comments and suggestions on these estimates during the interviews.

DOE asks interview participants to identify any confidential information that they have provided, either orally or in writing. DOE considers all information collected, as appropriate, in its decision-making process. However, DOE does not make confidential information available in the public record. DOE also asks participants to identify all information that they wish to have included in the public record, but do not want to have associated with their interview. DOE incorporates this information into the public record, but reports it without attribution.

DOE collates the completed interview questionnaires and prepares a summary of the major issues. For more detail on the methodology used in the manufacturer impact analysis, see Chapter 12 of the TSD.

2. Industry Cash Flow Analysis

The industry cash flow analysis relies primarily on the GRIM. DOE uses the GRIM to analyze the financial impacts of more stringent energy conservation standards on the industry. The GRIM analysis uses several factors to determine annual cash flows from a new standard: (1) Annual expected revenues; (2) manufacturer costs (including COGS, depreciation, research and development, selling, and general and administrative expenses); (3) taxes; and (4) conversion capital expenditures. DOE compares the GRIM results against base-case projections that involve no new standards. The financial impact of new standards is the difference between the two sets of discounted annual cash flows. For more information on the

industry cash flow analysis, see Chapter 12 of the TSD.

3. Manufacturer Sub-Group Analysis

Industry-wide cost estimates are not adequate to assess differential impacts among sub-groups of manufacturers. For example, small and niche manufacturers, or manufacturers whose cost structure differs significantly from the industry average, could experience a more negative impact. Ideally, DOE would consider the impact on every firm individually; however, it typically uses the results of the industry characterization to group manufacturers exhibiting similar characteristics.

During the interviews, DOE will discuss the potential sub-groups and sub-group members it has identified for the analysis. DOE will encourage manufacturers to recommend sub-groups or characteristics that are appropriate for the sub-group analysis. For more detail on the manufacturer sub-group analysis, see Chapter 12 of the TSD.

4. Competitive Impacts Assessment

DOE must also consider whether a new standard is likely to reduce industry competition, and the Attorney General must determine the impacts, if any, of any reduced competition. DOE makes a determined effort to gather and report firm-specific financial information and impacts. The competitive analysis includes an assessment of the impacts on smaller manufacturers. DOE bases this assessment on manufacturing cost data and on information collected from interviews with manufacturers. The manufacturer interviews focus on gathering information to help assess asymmetrical cost increases to some manufacturers, increased proportions of fixed costs that could increase business risks, and potential barriers to market entry (e.g., proprietary technologies).

5. Cumulative Regulatory Burden

DOE recognizes and seeks to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same equipment. DOE will analyze and consider the impact on manufacturers of multiple, equipment-specific regulatory actions.

In the Framework Document, DOE asked what regulations or pending regulations it should consider in the analysis of cumulative regulatory burden. DOE stated it will study the potential impacts of these cumulative burdens in greater detail during the MIA conducted during the NOPR phase.

During the Framework comment period, several stakeholders commented on cumulative regulatory burden on beverage vending machine manufacturers. PepsiCo stated that the beverage vending machine rulemaking should not establish standards that interfere with other Federal requirements, such as those related to greenhouse gases and global warming. (Public Meeting Transcript, No. 8 at p. 147) Dixie-Narco stated that other regulatory burdens are Restriction of Hazardous Substance rules, California Energy Commission regulations, Natural Resources Canada regulations, and new State and municipality regulations. (Public Meeting Transcript, No. 8 at p. 256) Royal Vendors stated that coordination with the California Energy Commission's and Canadian Standards Association's regulations would reduce the burden on the industry. (Public Meeting Transcript, No. 8 at p. 273) USA Technologies stated that the current technology puts U.S. manufacturers at a disadvantage in relation to other nations as we look toward 2012. In addition, USA Technologies commented that DOE should be aware that the phaseout of refrigerants currently used in beverage vending machines will require a complete overhaul of current parameters, which will make DOE's current work obsolete. (USA Technologies, No. 9 at p. 1) EEI stated that, regarding cumulative regulatory burden, DOE should consider current, new, and upcoming regulations in Canada, Europe, and Mexico (along with any U.S. State regulations) that may affect the refrigerated vending machine industry. (EEI, No. 12 at p. 7) Dixie-Narco stated that other burdens include requirements set by specific customers (e.g., Coca-Cola company and PepsiCo) relating to performance, marketing, and merchandising of the equipment; Dixie-Narco also suggested that DOE should consider sanitary standards published by NAMA and the National Sanitation Foundation applicable to vending equipment. (Dixie-Narco, No. 14 at p. 4)

In response, DOE identified several regulations relevant to beverage vending machines through its own research and discussions with manufacturers, including existing or new standards for beverage vending machines, phaseout of HCFCs and foam insulation blowing agents, standards for other equipment made by beverage vending machine manufacturers, State energy conservation standards, and international energy conservation standards. See Chapter 12 of the TSD for more detail. DOE understands that complying with such regulations requires corporations to invest in both human and capital resources. In addition, the emphasis on cumulative regulatory burden in the comments submitted during the Framework comment period further highlights the importance of such regulations to stakeholders. DOE will consider the substantial impact of other regulatory programs, both domestic and international, on beverage vending machine manufacturers. As mentioned above, DOE will study the potential impacts of these cumulative burdens in greater detail in the MIA conducted during the NOPR phase. DOE invites additional comment and data from stakeholders and manufacturers on regulations applicable to beverage vending machine manufacturers that contribute to their regulatory burden.

6. Preliminary Results for the Manufacturer Impact Analysis

DOE received views from manufacturers through preliminary interviews about what they perceive to be the possible impact of new standards on profitability. They stated that a new energy conservation standard has the potential to affect financial performance in several ways. The capital investment needed to upgrade or redesign equipment and equipment platforms before they have reached the end of their useful life can require conversion costs that otherwise would not be expended, resulting in stranded investments. In addition, more stringent standards can result in higher per-unit costs that may deter some customers from buying higher-margin units with more features, thereby decreasing manufacturer profitability.

DOE estimates that a beverage vending machine production line would have a life cycle of approximately 5 to 10 years in the absence of standards. During that period, manufacturers would not make major equipment changes that alter the underlying platforms. Thus, a standard that took effect and resulted in a major platform redesign before the end of the platform's life would strand a portion of the earlier capital investments.

DOE asked manufacturers what level of conversion costs they anticipated if efficiency standards were to take effect. In general, manufacturers expected only conversion costs associated with redesigning insulation foaming fixtures. Manufacturers stated that no capital investments would be needed to go from ENERGY STAR Tier 1 to Tier 2. One manufacturer estimated the retooling capital investments needed to comply with efficiency levels beyond Tier 2 to

be several million dollars. One manufacturer indicated that it would experience stranded assets if standards were too stringent and production facilities needed to be moved out of the country.

The impact of new energy conservation standards on employment is another important consideration in the rulemaking process. To assess how domestic employment patterns might be affected by new energy conservation standards for beverage vending machines, DOE posed several questions to manufacturers on that topic.

In response, some beverage vending machine manufacturers stated that they have considered moving their production out of the United States, primarily because of concerns about profitability and the opportunity for lower labor costs if future standards are too stringent. If manufacturers need to make large capital investments to produce redesigned platforms, they have strong financial incentives to invest in a location with lower labor costs. Mexico is the most common location for U.S. manufacturers to establish new production capacity since it offers low labor rates (relative to the United States) and proximity to the U.S. market.

DOE asked manufacturers to what degree they expect industry consolidation to occur in the absence of standards. Manufacturers stated that they expect no industry consolidation in the future. Three companies now account for a large majority of beverage vending machine sales. Historically, the beverage vending machine industry has not seen extensive consolidation, although there has been a lot of consolidation in recent years of the industry's customers, such as bottling companies.

Manufacturers also discussed how standards would affect their ability to compete. Some stated that new standards would not disproportionately advance or harm their competitive positions. Others stated that if a company had more available access to capital, that company might meet the standard at a lower cost or in a shorter timeframe, and such company would thus have a better competitive position and possibly gain market share. For more preliminary results of the manufacturer impact analysis, such as impacts on financial performance, equipment utility and performance, and cumulative regulatory burden, see Chapter 12 of the TSD.

L. Utility Impact Analysis

For the NOPR, the utility impact analysis will estimate the effects on the utility industry of reduced energy consumption due to improved equipment efficiency resulting from any energy conservation standard for beverage vending machines. The analysis compares modeling results for the base case with results for each candidate standard's case. It consists of forecasted differences between the base case and standards case for electricity generation, installed capacity, sales, and prices.

To estimate the effects of potential beverage vending machine standard levels on the electric utility industry, DOE intends to use a variant of the EIA's NEMS.[48] NEMS, which is available in the public domain, is a large, multi-sectoral, partial equilibrium model of the U.S. energy sector. EIA uses NEMS to produce the *AEO2007*, which is a widely recognized baseline energy forecast for the U.S. DOE will use a variant of NEMS known as NEMS-Building Technologies (BT) to provide key inputs to the utility impact analysis. Again, NEMS–BT produces a widely recognized reference case forecast for the United States and is available in the public domain.

The use of NEMS–BT for the utility impact analysis offers several advantages. As the official DOE energy forecasting model, it relies on a set of assumptions that are transparent and have received wide exposure and commentary. NEMS–BT allows an estimate of the interactions between the various energy supply and demand sectors and the economy as a whole. The utility impact analysis will determine the changes for electric utilities in installed capacity and generation by fuel type produced by each CSL, as well as changes in electricity sales to the commercial sector. At the Framework public meeting, DOE asked whether there are tools besides NEMS–BT that the Department should consider using for conducting its utility impact analysis. EEI suggested that DOE consider the industrial building demand module in NEMS for this analysis, because beverage vending machines are installed in manufacturing and military/Federal facilities that typically pay industrial rates on their utility bills. (EEI, No. 12 at p. 7) DOE will investigate using this module in addition to the commercial building demand module during the NOPR phase of this rulemaking.

DOE plans to conduct the utility analysis as a policy deviation from the *AEO2007*, applying the same basic set of premises. For example, the operating characteristics (e.g., energy conversion efficiency, emissions rates) of future electricity generating plants are the same in the *AEO2007* reference case, as are the prospects for natural gas supply.

DOE also will explore deviations from some of the reference case premises to represent alternative future outcomes. Two alternative scenarios use the high- and low-economic-growth cases of *AEO2007*. (The reference case corresponds to medium growth.) The high-economic-growth case projects higher growth rates for population, labor force, and labor productivity, resulting in lower predicted inflation and interest rates relative to the reference case and higher overall aggregate economic growth. The opposite is true for the low-growth case. Starting in 2012, the high-growth case predicts growth in per capita gross domestic product of 3.5 percent per year, compared with 3.0 percent per year in the reference case and 2.5 percent per year in the low-growth case. While supply-side growth determinants vary in these cases, *AEO2007* uses the same reference case energy prices for all three economic growth cases so that the impact of differences in the three scenarios are comparable. Different economic growth scenarios will affect the rate of growth of electricity demand in different ways.

The electric utility industry analysis will consist of NEMS–BT forecasts for generation, installed capacity, sales, and prices. The model uses predicted growth in demand for each end use to create a projection of the total electric system load growth for each of fifteen electricity market module supply regions, and then to predict the necessary additions to capacity. For electrical end uses, the NEMS–BT accounts for the implementation of energy conservation standards by decrementing the appropriate reference case load shape. DOE determines the size of the decrement using data on the per-unit energy savings developed in the LCC and PBP analyses (Chapter 8 of the TSD) and the forecast of shipments developed for the NIA (see Chapter 9 of the TSD).

The predicted reduction in capacity additions is sensitive to the standard's peak load impacts. DOE will investigate the need to adjust the hourly load

[48] For more information on NEMS, please see the U.S. Department of Energy, Energy Information Administration (EIA) documentation. A useful summary is *National Energy Modeling System: An Overview 2003,* Report number: DOE/EIA–0581 (March 2003) (available at: *http://tonto.eia.gov/FTPROOT/forecasting/05812003.pdf*). DOE/EIA approves use of the name ''NEMS'' to describe only an official version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and the model is run under various policy scenarios that are variations on DOE/EIA assumptions, DOE refers to it by the name ''NEMS–BT'' in this analysis.

profiles that include this end use in NEMS–BT. Since the *AEO2007* version of NEMS–BT forecasts only to 2030, DOE must extrapolate the results to 2042. It is not feasible to extend the forecast period of NEMS–BT for the purpose of this analysis, nor does EIA have an approved method for extrapolation of many outputs beyond 2030. Therefore, DOE will use the approach developed by EIA to forecast fuel prices for the FEMP. FEMP uses these prices to estimate LCCs of Federal equipment procurements. For petroleum products, EIA uses the average growth rate for the world oil price from 2010 to 2025, in combination with refinery and distribution markups from 2025, to determine regional price forecasts. Similarly, EIA derives natural gas prices from an average growth rate figure in combination with regional price margins from 2025. Results of the analysis will include changes in commercial electricity sales, and installed capacity and generation by fuel type, for each CSL in five-year, forecasted increments extrapolated to 2042. For more information on the utility impact analysis, refer to Chapter 13 of the TSD.

M. Employment Impact Analysis

At the NOPR stage, DOE estimates the impacts of standards on employment for equipment manufacturers, relevant service industries, energy suppliers, and the economy in general. The following discussion explains the methodology DOE plans to use in conducting the employment impact analysis for this rulemaking. Both indirect and direct employment impacts are analyzed. Direct employment impacts would result if standards led to a change in the number of employees at manufacturing plants and related supply and service firms.

Indirect employment impacts are impacts on the national economy other than the manufacturing sector being regulated. Indirect impacts may result both from expenditures shifting among goods (substitution effect) and changes in income that lead to a change in overall expenditure levels (income effect). DOE defines indirect employment impacts from standards as net jobs eliminated or created in the general economy as a result of increased spending driven by the increased equipment prices and reduced spending on energy.

Using an input/output model of the U.S. economy, this analysis seeks to estimate the effects on different sectors and the net impact on jobs. DOE will estimate national employment impacts for major sectors of the U.S. economy in the NOPR, using public and commercially-available data sources and software. DOE will make all methods and documentation pertaining to the employment impact analysis available for review in the TSD published in conjunction with the NOPR.

DOE developed Impact of Sector Energy Technologies (ImSET), a spreadsheet model of the U.S. economy that focuses on 188 sectors most relevant to industrial, commercial, and residential building energy use.[49] ImSET is a special-purpose version of the U.S. Benchmark National Input-Output (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies that are considered by the DOE Office of Energy Efficiency and Renewable Energy. The current version of the model allows for more complete and automated analysis of the essential features of energy-efficiency investments in buildings, industry, transportation, and the electric power sectors compared to previous versions used in earlier rulemakings.

The ImSET software includes a personal computer-based I–O model with structural coefficients to characterize economic flows among the 188 sectors. ImSET's national economic I–O structure is based on the 1997 Benchmark U.S. table (Lawson, et al. 2002),[50] specially aggregated to 188 sectors. The time scale of the model is 50 years, with annual increments.

The model is a static I–O model, which allows a great deal of flexibility concerning the types of energy-efficiency effects that it can accommodate. For example, certain economic effects of energy efficiency improvements require an assessment of inter-industry purchases, which is handled in the model. Some energy-efficiency investments will not only reduce the costs of energy in the economy but the costs of labor and other goods and services as well, which is accommodated through a recalculation of the I–O structure in the model. Output from the ImSET model can be used to estimate changes in employment, industry output, and wage income in the overall U.S. economy resulting from changes in expenditures in the various sectors of the economy.

Although DOE intends to use ImSET for its analysis of employment impacts, it welcomes input on other tools and factors it might consider. For more information on the employment impacts analysis, see Chapter 14 of the TSD.

N. Environmental Assessment

For the NOPR, DOE will assess the impacts of energy conservation standards for beverage vending machine standard levels on certain environmental indicators, using NEMS–BT to provide key inputs to the analysis. The environmental assessment produces results in a manner similar to those provided in *AEO2007*. DOE anticipates that the primary environmental effects will be reduced power plant emissions resulting from reduced electricity consumption.

The intent of the environmental assessment is to provide estimates of reduced power plant emissions and to fulfill requirements to properly quantify and consider the environmental effects of all new Federal rules. The environmental assessment that will be produced by NEMS–BT considers potential environmental impacts from three pollutants (sulfur dioxide (SO_2), nitrogen oxides (NO_X), and mercury (Hg)) and from CO_2 emissions. For each of the trial standard levels, DOE will calculate total undiscounted and discounted power plant emissions using NEMS-BT and will use further external analysis as needed.

DOE will conduct each portion of the environmental assessment performed for this rulemaking as an incremental policy impact (i.e., an energy conservation standard for beverage vending machines) of the *AEO2007* forecast, applying the same basic set of assumptions used in *AEO2007*. For example, the emissions characteristics of an electricity generating plant will be exactly those used in *AEO2007*. Also, forecasts conducted with NEMS–BT consider the supply-side and demand-side effects on the electric utility industry. Thus, DOE's analysis will account for any factors affecting the type of electricity generation and, in turn, the type and amount of airborne emissions the utility industry generates.

The NEMS–BT model tracks carbon emissions with a specialized carbon emissions estimation subroutine, producing reasonably accurate results due to the broad coverage of all sectors and inclusion of interactive effects. Past experience with carbon results from NEMS–BT suggests that emissions estimates are somewhat lower than emissions based on simple average factors. One reason for this divergence is that NEMS–BT tends to predict that conservation measures will slow generating capacity growth in future

[49] Roop, J. M., M. J. Scott, and R. W. Schultz, ''ImSET: Impact of Sector Energy Technologies,'' PNNL-15273 (Pacific Northwest National Laboratory, Richland, WA) (2005).

[50] Lawson, Ann M., Kurt S. Bersani, Mahnaz Fahim-Nader, and Jiemin Guo, ''Benchmark Input-Output Accounts of the U.S. Economy, 1997,'' Survey of Current Business (Dec. 2002), pp. 19–117.

years, and new generating capacity is expected to be more efficient than existing capacity. On the whole, NEMS–BT provides carbon emissions results of reasonable accuracy, at a level consistent with other Federal published results. In addition to providing estimates of quantitative impacts of beverage vending machine standards on CO_2 emissions, DOE will consider the use of monetary values to represent the potential value of such emissions reductions. DOE invites comment on how to estimate such monetary value of such effects or on any widely accepted values which might be used in DOE's analyses.

NEMS–BT also reports on SO_2 and NO_X, which DOE has reported in past analyses. The Clean Air Act Amendments of 1990 [51] set an SO_2 emissions cap on all large power plants. However, attainment of this target is flexible among generators through the use of emissions allowances and tradable permits. Although NEMS–BT includes a module for SO_2 allowance trading and delivers a forecast of SO_2 allowance prices, accurate simulation of SO_2 trading implies that the effect of energy conservation standards on physical emissions will be zero because emissions will always be at or near the ceiling. However, there may be an SO_2 economic benefit from energy conservation in the form of a lower SO_2 allowance price. Since the impact of any one standard on the allowance price is likely to be small and highly uncertain, DOE does not plan to monetize any potential SO_2 benefit.

NEMS–BT also has an algorithm for estimating NO_X emissions from power generation. The impact of these emissions, however, will be affected by the Clean Air Interstate Rule (CAIR) issued by the U.S. Environmental Protection Agency on March 10, 2005.[52] 70 FR 25162 (May 12, 2005). CAIR will permanently cap emissions of NO_X in 28 eastern States and the District of Columbia. As with SO_2 emissions, a cap on NO_X emissions means that equipment energy conservation standards are not likely to have a physical effect on NO_X emissions in States covered by the CAIR caps. Therefore, while the emissions cap may mean that physical emissions reductions in those States will not result from standards, standards could produce an environmental-related economic benefit in the form of lower prices for emissions allowance credits. However, as with SO_2 allowance prices, DOE does not plan to monetize this benefit for those States because the impact on the NO_X allowance price from any single energy conservation standard is likely to be small and highly uncertain. DOE seeks comment on how it might value NO_X emissions for the 22 States not covered under CAIR.

With regard to mercury emissions, NEMS–BT has an algorithm for estimating these emissions from power generation, and, as it has done in the past, DOE is able to report an estimate of the physical quantity of mercury emissions reductions associated with an energy conservation standard. DOE assumed that these emissions would be subject to EPA's Clean Air Mercury Rule [53] (CAMR), which would permanently cap emissions of mercury for new and existing coal-fired plants in all States by 2010. Similar to SO_2 and NO_X, DOE assumed that under such system, energy conservation standards would result in no physical effect on these emissions, but may result in a small and highly uncertain environmental-related economic benefit in the form of a lower price for emissions allowance credits.

On February 8, 2008, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its decision in *State of New Jersey, et al.* v. *Environmental Protection Agency,*[54] in which the Court, among other actions, vacated the CAMR referenced above. Accordingly, DOE is considering whether changes are needed to its plan for addressing the issue of mercury emissions. DOE invites public comment on addressing mercury emissions in this rulemaking.

With regard to particulates, these emissions are a special case because they arise not only from direct emissions, but also from complex atmospheric chemical reactions that result from NO_X and SO_2 emissions. DOE does not intend to analyze or report on the particulate emissions from power stations because of the highly complex and uncertain relationship between particulate emissions and particulate concentrations that impact air quality.

In sum, the methodology for the environmental assessment is similar to the methodology (*i.e., based on NEMS*) used to estimate the environmental impacts published in the *AEO2007*. These results include power sector emissions for SO_2, NO_X, mercury and CO_2 in five-year forecasted increments extrapolated to 2042. The outcome of the NOPR analysis for each trial standard level is reported as a deviation from the *AEO2007* reference (base) case. For more detail on the environmental assessment, see the environmental assessment report of the TSD.

O. Regulatory Impact Analysis

DOE will prepare a draft regulatory impact analysis in compliance with Executive Order 12866, ''Regulatory Planning and Review,'' signed on September 30, 1993, which will be subject to review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA). 58 FR 51735 (Oct. 4, 1993).

As part of the regulatory impact analysis (and as discussed in Section II.K of this ANOPR), DOE will identify and seek to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same equipment. Through manufacturer interviews and literature searches, DOE will compile information on burdens from existing and impending regulations affecting the beverage vending machines covered under this rulemaking. DOE also seeks input from stakeholders about regulations whose impacts it should consider.

The regulatory impact analysis also will address the potential for non-regulatory approaches to supplant or augment energy conservation standards to improve the efficiency of beverage vending machines. The following list includes non-regulatory means of achieving energy savings that DOE may consider:

- No new regulatory action
- Consumer tax credits
- Manufacturer tax credits
- Performance standards
- Rebates
- Voluntary energy efficiency targets
- Early replacement
- Bulk government purchases

In support of DOE's NOPR, the TSD will include a complete quantitative analysis of each alternative to the proposed conservation standard. The methodology for this analysis is discussed briefly below.

DOE will use the NES spreadsheet model (discussed in Sections I.B.5 and II.I of this ANOPR) to calculate the NES and the NPV corresponding to each alternative to the proposed standards. See Chapter 10 of the TSD for details on the NES spreadsheet model. To compare each alternative quantitatively to the proposed conservation standards, the model will need to quantify the effect of each alternative on the purchase and

[51] The Clean Air Act Amendments of 1990 were signed into law as Pub. L. 101–549 on November 15, 1990. The amendment can be viewed at *http://www.epa.gov/air/caa/*.

[52] See *http://www.epa.gov/cleanairinterstaterule/*.

[53] 70 FR 28606 (May 18, 2005).

[54] No. 05–1097, 2008 WL 341338, at *1 (D.C. Cir. Feb. 8, 2008).

use of energy-efficient commercial equipment. Once each alternative is properly quantified, DOE will make the appropriate revisions to the inputs in the NES spreadsheet model. The following are key inputs that DOE may revise in the NES spreadsheet model:

- Energy prices and escalation factors;
- Implicit market discount rates for trading off purchase price against operating expense when choosing equipment efficiency;
- Customer purchase price, operating cost, and income elasticities;
- Customer price versus efficiency relationships; and
- Equipment stock data (purchase of new equipment or turnover rates for inventories).

The following are the key measures of the impact of each alternative:

- Commercial energy use (EJ = 10^{18} joule) is the cumulative energy use of the equipment from the effective date of the new standard (i.e., 2012) to 2042. DOE will report electricity consumption as primary energy.
- NES is the cumulative national energy use from the base-case projection less the alternative standards-case projection.
- NPV is the value of future operating cost savings from beverage vending machines bought between the effective date of the new standard and 2042. DOE calculates the NPV as the difference between the present value of equipment and operating expenditures (including energy) in the base case, and the present value of expenditures in each alternative policy case. DOE discounts future operating and equipment expenditures to 2007 using a seven-percent real discount rate. DOE calculates operating expenses (including energy) for the life of the equipment.

For more information on the regulatory impact analysis, see the regulatory impact analysis report in the TSD.

III. Candidate Energy Conservation Standards Levels

In terms of process, DOE specifies CSLs in the ANOPR, but it does not propose a particular standard at this stage of the rulemaking. DOE selected up to nine energy consumption levels for each class of beverage vending machine for use in the LCC and NIA. Based on the results of the ANOPR analysis, DOE selects a subset from the CSLs analyzed in the ANOPR for more detailed analysis during the NOPR stage of the rulemaking. The range of CSLs selected includes the most energy-efficient level or most energy-efficient combination of design options, the combination of design options or efficiency level with the minimum LCC, and a combination of design options or efficiency level with a PBP of no more than three years. DOE may also select CSLs that incorporate noteworthy technologies or fill in large gaps between efficiency levels of other CSLs.

As noted above, DOE has included the most energy-efficient level analyzed as a CSL, and DOE has identified the level with the maximum LCC savings for each equipment class. The calculated national average PBPs from the LCC analysis suggested that many of the energy efficiency levels analyzed provided a national average payback of less than three years when compared with the baseline equipment. DOE chose to designate the maximum energy efficiency level that provided a payback of less than three years as a CSL. These three selection criteria provided two or three CSL selections per equipment class. Therefore, DOE selected two other lower efficiency levels for each equipment class to provide greater variation in CSLs for future analysis. The selection of these additional levels reflects DOE review of the relative cost effectiveness of the levels when compared with the baseline equipment and other efficiency levels.

DOE selected four CSLs for each equipment class. Table III.1 shows the selected CSLs based on the energy consumption of the specific equipment analyzed in the engineering analysis. DOE seeks feedback on its selection of these specific candidate standard levels for the post-ANOPR analysis phase. Section IV.E of this ANOPR discusses this subject, identified as Issue 7 under ''Issues on Which DOE Seeks Comment.''

DOE will refine its final selection of CSLs for further analysis after receiving input from stakeholders on the ANOPR and after any revision of the ANOPR analyses. The CSLs will then be recast as Trial Standard Levels (TSLs). DOE will analyze specific TSLs during the post-ANOPR analysis and report the results in the NOPR.

TABLE III.1.—CANDIDATE STANDARD LEVELS AND FACTORS CONSIDERED IN THEIR SELECTION FOR FUTURE ANALYSIS

Equipment class	Candidate standard level selection considerations					
	Maximum efficiency level	Maximum efficiency level with positive LCC savings	Efficiency level with minimum LCC	Highest efficiency level with PBP <3 years	Additional candidate standard level selected for future analysis	
Class A	Level 8	Level 7	Level 5	Level 6	Level 4	Level 3.
Class B	Level 8	Level 7	Level 4	Level 4	Level 5	Level 3.

Because the equipment classes cover a variety of equipment sizes, DOE has suggested defining the standard in terms of upper limits on daily energy consumption normalized by refrigerated volume (''V,'' as measured by ANSI/AHAM HRF–1–2004). Table III.2 presents the CSLs for the analyzed equipment classes in terms of these normalized metrics.

TABLE III.2.—CANDIDATE STANDARD LEVELS FOR ANALYZED EQUIPMENT CLASSES EXPRESSED IN TERMS OF THE NORMALIZED TEST METRICS

Equipment class	Test metric	Candidate standard level in order of efficiency expressed in terms of the test metric				
		Baseline	CSL1	CSL2	CSL3	CSL4
Class A	Daily Energy Consumption/ Refrigerated Volume kWh/day/ft^3.	1.08 (Level 1)	0.90 (Level 4)	0.75 (Level 6)	0.70 (Level 7)	0.64 (Level 8).
Class B	Daily Energy Consumption/ Refrigerated Volume kWh/day/ft^3.	2.93 (Level 1)	2.61 (Level 3)	2.47 (Level 4)	2.46 (Level 5)	2.39 (Level 6).

When an energy conservation standard is defined for an equipment class, DOE must consider how to express the level in a manner suitable for all equipment within that class. This is of particular concern when the rating is in terms of energy consumption and energy consumption varies within a class due to variations in equipment size or capacity.

DOE plans to define energy conservation standards for refrigerated beverage vending machines in terms of:

Maximum energy consumption M (kWh/day) $= B \times V + K$

Where:

B is expressed in terms of kWh/day/ft^3 of measured volume,

V is the measured volume (ft^3) calculated for the equipment class, and

K is an offset factor expressed in kWh/day.

DOE seeks feedback on this approach for characterizing energy conservation standards for refrigerated beverage vending machines. If this approach is acceptable, DOE seeks comments on how it could develop the appropriate offset factor, K, for the two classes of equipment. Section IV.E of this ANOPR discusses this subject, identified as Issue 8 under ''Issues on Which DOE Seeks Comment.''

IV. Public Participation

A. Attendance at Public Meeting

The time, date, and location of the public meeting are set forth in the **DATES** and **ADDRESSES** sections at the beginning of this document. Anyone who wishes to attend the public meeting must notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests to Speak

Any person who has an interest in today's notice, or who represents a group or class of persons with an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Please hand deliver requests to speak to the address shown under the heading ''*Hand Delivery/Courier*'' in the **ADDRESSES** section of this ANOPR between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail to the address shown under the heading ''*Postal Mail*'' in the **ADDRESSES** section of this ANOPR, or by e-mail to *Brenda.Edwards@ee.doe.gov.*

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE asks persons scheduled to make an oral presentation at the public meeting to submit a copy of their statements at least two weeks before the public meeting, either in person, by postal mail, or by e-mail. Please include an electronic copy of your statement on a computer diskette or compact disk when delivery is by postal mail or in person. Electronic copies must be in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format. At its discretion, DOE may permit any person who cannot supply an advance copy of his or her statement to make an oral presentation, if that person has made alternative arrangements with the Building Technologies Program. In such situations, the request to give an oral presentation should ask for alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record and transcribe the proceedings. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments about the proceedings, and any other aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE) before discussion of a particular topic. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to the public meeting. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, Suite 600, SW, Washington, DC, 20024, (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding all aspects of this ANOPR before or after the public meeting, but no later than July 16, 2008. Please submit comments, data, and information by e-mail to: *bevergevending.rulemaking@ee.doe.gov*. Please submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the Docket Number EERE–2006–STD–0125 and/or RIN 1904–AB58, and whenever possible carry the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by a signed original paper document. No telefacsimiles (faxes) will be accepted.

Under 10 CFR Part 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies. One copy of the document shall include all the information believed to be confidential, and the other copy of the document shall have the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors that DOE considers when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by, or available from, other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

DOE is interested in receiving comments on all aspects of this ANOPR. DOE particularly invites comments or data to improve DOE's analysis, including data or information that will respond to the following questions or concerns addressed in this ANOPR.

1. Equipment Classes

In accordance with EPCA section 325(p)(1)(A), DOE identified the equipment classes covered under this rulemaking. (42 U.S.C. 6295(p)(1)(A)) In making that determination, DOE decided to focus the present ANOPR analyses on two equipment classes of beverage vending machines based upon their two predominant applications, namely, Class A machines that are installed indoors and Class B machines that are installed both indoors and outdoors. Pursuant to EPCA section 325(p)(1)(B), DOE requests comments on the validity of this approach and invites interested persons to submit written presentations of data, views, and arguments. (42 U.S.C. 6295(p)(1)(B)) (See Section II.A.2 of this ANOPR for further details.)

2. Compressor and Lighting Operating Hours

DOE's energy use characterization presumes that there are no controls that limit display lighting or compressor operation in a beverage vending machine to certain hours of the day or would be affected by occupancy patterns in the building. It is known, however, that such controllers exist and can either be added on or enabled in certain beverage vending machines. DOE requests comments on the need to incorporate such controls in its energy analysis and how it might do so in the NOPR analysis. (See Section II.E of this ANOPR for further details.)

3. Refurbishment Cycles

DOE requests comments on refurbishment cycles for beverage vending machines that may be prevalent in the field and may differ from standardized practices or the two cycles during the equipment lifetime assumed by DOE. These refurbishment cycles could affect actual energy consumption savings as a result of increased energy efficiency as compared to those savings estimated in the energy use characterization analysis and as reported in the TSD. DOE requests comments on: (1) The frequency of refurbishment cycles; (2) how refurbishing the vending machines might affect energy use in the field; and (3) whether and how DOE could account for these changes in assessing the overall impacts of the candidate standards levels on beverage vending machines. (See Section IV.E.3 of this ANOPR for further details.)

4. Life-Cycle Cost Baseline Level

DOE did not receive data from the industry or in the manufacturer interviews concerning the average energy efficiency of beverage vending machines currently being shipped. An analysis of the literature suggests that little data on the energy characteristics of beverage vending machines in the general market are available. Therefore, DOE used the Level 1 established in the engineering analysis as the baseline efficiency for the LCC analysis.

Selection of the baseline efficiency level impacts the LCC and PBP analyses. It affects PBP, since payback is calculated from the baseline efficiency level, and affects the maximum efficiency level showing LCC savings, and the magnitude of LCC savings. It can also affect the number of users who experience LCC savings at any level. The selection of the baseline level does not generally affect the efficiency level with maximum LCC savings. DOE requests feedback on whether the Level 1 baseline DOE selected is valid for the LCC analysis, and if not, what changes DOE should make to provide a more realistic baseline. Since higher efficiency equipment is sold in the market, DOE also seeks input on whether it should use a distribution of efficiencies for the LCC analysis baseline, and if so, what data could be used to populate this distribution. If more detailed data to develop a distribution of efficiencies in the baseline cannot be provided, DOE seeks input on how a sensitivity analysis to alternative baselines could best be used to inform the LCC and NES analyses supporting the rulemaking. (See Section II.G.5 of this ANOPR for further details.)

5. Base-Case and Standards-Case Forecasts

Because key inputs to the calculation of the NES and NPV depend on the estimated efficiencies under the base case (without standards) and the standards case (with standards), forecasted efficiencies are of great importance to the analysis. Information available to DOE suggests that forecasted market shares would remain frozen throughout the analysis period (i.e., 2012–2042). For its determination of standards-case forecasted efficiencies, DOE used a roll-up scenario to establish market shares by efficiency level for the year that standards become effective (i.e., 2012). Available information suggests that equipment shipments with efficiencies in the base case that did not meet the standard level under consideration would roll up to meet the new standard level. Available information also suggests that no equipment efficiencies in the base case that were above the standard level under consideration would be affected. DOE requests feedback on its development of standards-case efficiency forecasts from the base-case efficiency forecast, and on how it

determined that standards would affect efficiency distributions in the year that standards are to take effect. (See Section II.I.2 of this ANOPR for further details.)

6. Differential Impact of New Standards on Future Shipments by Equipment Classes

The shipment model used in the NES and NIA presumes that the relative market share of the different classes of beverage vending machines remains constant over the time period analyzed. While DOE is aware that market preferences for certain types of equipment may change in the future, DOE has no data with which to predict or characterize those changes. DOE is particularly concerned whether higher standards for one class of beverage vending machines are likely to generate significant market shifts to other equipment that may have higher energy consumption (or lower efficiency). By developing standards for both classes of beverage vending machines within the scope of this rulemaking using the same economic criteria, DOE hopes to mitigate this concern. However, DOE requests stakeholder input on the potential for standards-driven market shifts between equipment classes that could reduce national energy savings, and on how the standards-setting process can reduce or eliminate these shifts. (See Section II.I.2 of this ANOPR for further details.)

7. Selection of Candidate Standard Levels for Notice of Proposed Rulemaking Analysis

DOE is required to examine specific criteria for the selection of CSLs. Some of these criteria are economically based and the resulting CSLs selected may be affected by updates to the ANOPR analysis after input from stakeholders. DOE has discretion over the selection of additional standard levels it chooses to analyze. DOE seeks input on the candidate standard levels selected for future analysis shown in Table III.1 (See Section III of this ANOPR for further details.)

8. Approach to Characterizing Energy Conservation Standards

When an efficiency or energy conservation standard is defined for a class of equipment, DOE must consider how to express the level in a manner suitable for all equipment within that class. DOE seeks input on its approach for characterizing energy conservation standards for beverage vending machines as discussed in Section III. If the approach is acceptable, DOE seeks comments on how it could develop appropriate offset factors (K) for the two classes of equipment. (See Section III of this ANOPR for further details.)

V. Regulatory Review and Procedural Requirements

DOE submitted this ANOPR for review to the Office of Management and Budget (OMB), under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). If DOE later proposes energy conservation standards for certain beverage vending machines, and if the proposed rule constitutes a significant regulatory action, DOE would prepare and submit to OMB for review the assessment of costs and benefits required under section 6(a)(3) of the Executive Order. The Executive Order requires that each agency identify in writing the market failure or other specific problem that it intends to address that warrant new agency action, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted. (Executive Order 12866, § 1(b)(1)) DOE presumes that a perfectly functioning market would result in efficiency levels that maximize benefits to all affected persons. Consequently, without a market failure or other specific problem, a regulation would not be expected to result in net benefits to customers and the Nation. However, DOE also notes that whether it establishes standards for this equipment is determined by the statutory criteria expressed in EPCA. Even in the absence of a market failure or other specific problem, DOE nevertheless may be required to establish standards under existing law.

DOE's preliminary analysis suggests that beverage vending machines are predominantly owned either by site owners (i.e., the owner of the establishment where the vending machine is installed), or by bottlers or vending machine operators (i.e., the operator that installs, stocks, and services the equipment and retains a percentage of the coin-box-revenue). DOE believes that these owners and operators lack corporate direction in terms of energy policy. The transaction costs for these owners or operators to research, purchase, and install optimum-efficiency equipment are too high to make such action commonplace. DOE believes that there is a lack of information and/or information processing capability about energy efficiency opportunities in the beverage vending machine market available to site owners. Unlike residential heating and air conditioning equipment, beverage vending machines are not included in energy labeling programs such as the Federal Trade Commission's energy labeling program. Furthermore, the energy use of beverage vending machines is dependent on how often the machines are used and, as such, the relevant information is not readily available for the owners or operators to make a decision on whether improving the energy efficiency of beverage vending machines is cost-effective. To better understand this market, DOE seeks data on the efficiency levels of existing beverage vending machines in use by owner (i.e., site owner or machine operator), electricity price, equipment class (Class A or Class B machines) and installation type (i.e., indoors or outdoors).

DOE recognizes that beverage vending machines are not purchased in the same manner as regulated appliances that are sold in retail stores (e.g., room air conditioners). When purchased by the end user, beverage vending machines are more likely purchased directly from individual manufacturers through equipment catalogs or specification sheets. NAMA, unlike other industry trade associations, does not publish a directory of covered equipment. DOE seeks comment on the availability of energy efficiency information and the extent to which the information leads to informed choices, specifically given how such equipment is purchased.

To the extent there is potentially a substantial information problem, one could expect the energy efficiency for beverage vending machines to be more or less randomly distributed across key variables such as energy prices and usage levels. However, since data are not available on how such equipment is purchased, DOE seeks detailed data on the distribution of energy efficiency levels for both the new site owner and equipment operator markets. DOE plans to use these data to test the extent to which purchasers of this equipment behave as if they are unaware of the costs associated with their energy consumption. DOE requests data on, and suggestions for the existence and extent of potential market failures to complete an assessment of the significance of these failures and, thus, the net benefits of regulation.

A related issue is the problem of asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and effecting exchanges of goods and services). In the case of beverage vending machines, in most cases, the party responsible for the equipment purchase may not be the one who pays the cost to operate it. For example, in the case where the bottler

or beverage vending machine operator owns the equipment and the site owner pays the utilities, the vending machine operator may make the purchasing decision about the beverage vending machine without input from the site owner and may not offer options to the site owner to upgrade them.

In addition, this rulemaking is likely to yield certain ''external'' benefits resulting from improved energy efficiency of beverage vending machines that are not captured by the users of such equipment. These include both environmental and energy security-related externalities that are not reflected in energy prices, such as reduced emissions of greenhouse gases and reduced use of natural gas and oil for electricity generation. DOE invites comments on the weight that should be given to these factors in DOE's determination of the maximum energy efficiency level at which the total benefits are likely to exceed the total costs resulting from a DOE standard.

In addition, various other analyses and procedures may apply to such future rulemaking action, including those required by the National Environmental Policy Act (Pub. L. 91–190, 42 U.S.C. 4321 et seq.); the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4); the Paperwork Reduction Act (44 U.S.C. 3501 et seq.); the Regulatory Flexibility Act (5 U.S.C. 601 et seq.); and certain Executive Orders.

The draft of today's action and any other documents submitted to OMB for review are part of the rulemaking record and are available for public review at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, Suite 600, SW., Washington, DC 20024, (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's ANOPR.

Issued in Washington, DC, on June 9, 2008.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E8–13345 Filed 6–13–08; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Monday,
June 16, 2008

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 7 and 75

Refuge Alternatives for Underground Coal Mines; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7 and 75

RIN 1219–AB58

Refuge Alternatives for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; notice of public hearings and close of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is proposing requirements for refuge alternatives in underground coal mines and the training of miners in their use. The proposed rule also includes requirements for testing and approval of refuge alternatives. The proposal would implement section 13 of the Mine Improvement and New Emergency Response (MINER) Act of 2006. Consistent with the MINER Act, it includes MSHA's response to the National Institute for Occupational Safety and Health Report on Refuge Alternatives.

DATES: All comments must be received by midnight Eastern Standard Time on August 18, 2008. MSHA will hold 4 public hearings on July 29, July 31, August 5, and August 7, 2008. Details about the public hearings are in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Comments must be clearly identified with ''RIN 1219–AB58'' and may be sent by any of the following methods:

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Electronic mail: zzMSHA-comments@dol.gov.* Include ''RIN 1219–AB58'' in the subject line of the message.

(3) *Facsimile:* 202–693–9441. Include ''RIN 1219–AB58'' in the subject line of the message.

(4) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.

(5) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

Comments can be accessed electronically at *http://www.msha.gov* under the *Rules and Regs* link. MSHA will post all comments on the Internet without change, including any personal information provided. Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a list that enables subscribers to receive e-mail notification when rulemaking documents are published in the **Federal Register**. To subscribe, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

Information Collection Requirements: Comments concerning the information collection requirements of this proposed rule must be clearly identified with ''RIN 1219–AB58'' and sent to both the Office of Management and Budget (OMB) and MSHA. Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA. Comments to MSHA may be transmitted either electronically to *zzMSHA-Comments@dol.gov,* by facsimile to (202) 693–9441, or by regular mail, hand delivery, or courier to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey at *silvey.patricia@dol.gov* (E-mail), 202–693–9440 (Voice), or 202–693–9441 (Fax).

SUPPLEMENTARY INFORMATION: The outline of this proposal is as follows:

I. Introduction
A. Rulemaking Background
B. Discussion of the Hazard
II. Section-by-Section Analysis
A. Part 7 Approval
B. Part 75 Safety Standards
III. Executive Order 12866
A. Population at Risk
B. Benefits
C. Compliance Costs
IV. Feasibility
A. Technological Feasibility
B. Economic Feasibility
V. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act
A. Definition of a Small Mine
B. Factual Basis for Certification
VI. Paperwork Reduction Act
A. Summary
B. Procedural Details
VII. Other Regulatory Analyses
A. The Unfunded Mandates Reform Act of 1995
B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights
D. Executive Order 12988: Civil Justice Reform
E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

Public Hearings

MSHA will hold four public hearings on the proposed rule. These public hearings will begin at 9 a.m. and end after the last speaker speaks, and in any event not later than 5 p.m., on the following dates at the locations indicated:

Date	Location	Contact information
July 29, 2008	Radisson Hotel Salt Lake City Downtown, 215 West South Temple, Salt Lake City, UT 84101.	(801) 933–8022.
July 31, 2008	Marriott Charleston Town Center, 200 Lee Street East, Charleston, WV 25301	(304) 345–6500.
August 5, 2008	Hilton Suites Lexington Green, 245 Lexington Green Circle, Lexington, KY 40503	(859) 271–4000.
August 7, 2008	Sheraton Birmingham, 2101 Richard Arrington Jr. Blvd., Birmingham, AL 35203	(205) 324–5000.

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. Requests to speak at a hearing should be made at least 5 days prior to the hearing date. Requests to speak may be made by telephone (202–693–9440), facsimile (202–693–9441), or mail (MSHA, Office

of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939).

Any unallocated time at the end of each hearing will be made available to persons making same-day requests to speak. Any unallocated time at the end of each hearing will be made available to persons making same-day requests to speak. Speakers will speak in the order that they sign in at the hearing. At the discretion of the presiding official, the time allocated to each speaker for their presentation may be limited. Speakers and other attendees may also present information to the MSHA panel for inclusion in the rulemaking record.

The hearings will be conducted in an informal manner. Formal rules of evidence and cross examination will not apply. The hearing panel may ask questions of speakers. Speakers and other attendees may present written information to the MSHA panel for inclusion in the rulemaking record. MSHA will accept post-hearing written comments and data for the record from any interested party, including those not presenting oral statements, until the close of the comment period. MSHA will make transcripts of the hearings, post them on MSHA's Web site *http://www.msha.gov*, and include them in the rulemaking record.

I. Introduction

This proposed rule would implement section 13 of the Mine Improvement and New Emergency Response (MINER) Act of 2006. It would require that operators include refuge alternatives in the *Emergency Response Plan* required by section 2 of the MINER Act. MSHA's objective, consistent with the MINER Act, is to improve the safety of mines and mining. Toward that end, the proposal would improve mine operators' preparedness for mine emergencies and require refuge alternatives underground to protect persons trapped when a life-threatening event occurs that makes escape impossible. Refuge alternatives can also be used to assist miners in escaping from the mine. MSHA developed this proposed rule based on Agency data and experience, NIOSH recommendations, research on available and developing technology, and regulations of several states. The proposed rule includes—

- New requirements for testing and approval of refuge alternatives and components of refuge alternatives;
- Requirements for the availability and maintenance of refuge alternatives and communication facilities for refuge alternatives; and
- Requirements for miners to be trained in the location, use, maintenance, and transportation of refuge alternatives.

A. Rulemaking Background

Section 2 of the MINER Act requires underground coal mine operators to develop and adopt a written *Emergency Response Plan* (ERP), which must be approved by MSHA. The ERP provides for the evacuation of all individuals endangered by an emergency and the maintenance of individuals trapped underground. All ERPs must provide for emergency supplies of breathable air for individuals trapped underground sufficient to maintain them for a sustained period of time.

MSHA issued Program Policy Letter (PPL) No. P06–V–10 (October 24, 2006) to implement section 2 of the MINER Act. The PPL provides guidance to mine operators for developing ERPs and to MSHA District Managers in approving ERPs. MSHA issued Program Information Bulletin (PIB) No. P07–03 (February 8, 2007) to provide additional guidance to be used in conjunction with the PPL. The PIB represents the quantity of breathable air that would be sufficient to maintain persons for a sustained period of time.

Section 13 of the MINER Act directs NIOSH to conduct research on refuge alternatives and submit a report on the results of the research to the Secretary of Labor, among others. Section 13 also directs the Secretary of Labor to—

> * * * provide a response to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives containing a description of the actions, if any, that the Secretary intends to take based upon the report, including proposed regulatory changes and the reasons for such actions.

MSHA has reviewed NIOSH's report and determined that refuge alternatives are practical and will increase the chance for survival for persons trapped in underground coal mines, when integrated into the mine's comprehensive escape and rescue plans.

B. Discussion of the Hazard

MSHA reviewed a number of underground coal mine accident reports in the development of this proposed rule. The Agency discusses the following accidents, which reflect typical emergency conditions, hazards, and issues in underground coal mines.

On March 9, 1976, an explosion occurred at the Scotia Mine in Kentucky. Fifteen miners died from the explosion. Of these fifteen miners, six were found behind a partially built protective structure.

On December 19, 1984, a fire occurred at the Wilberg Mine in Utah. Twenty-eight miners were working on the section when the fire occurred. The intake airway and adjacent belt entry were impassable due to gas and smoke. One miner survived by using an SCSR and crawling on his stomach through the smoke-filled mine. The remaining twenty-seven miners who survived the fire, died while attempting to evacuate the mine.

On July 24, 2002, a nonfatal entrapment accident caused by a water inundation occurred at Quecreek #1 Mine, Black Wolf Coal Company, Inc., located at Quecreek, Somerset County, Pennsylvania. Nine miners had attempted to escape, but were blocked by water. The miners were trapped for over 3 days before all were rescued.

On January 2, 2006, an explosion in which 12 miners were trapped occurred at the Sago Mine, located near Tallmansville, West Virginia. The explosion killed one miner instantly and destroyed seals and filled portions of the mine with toxic levels of carbon monoxide. The victims' attempts to evacuate were unsuccessful and they barricaded themselves on the section. Unfortunately, the barricade was constructed in an area with high concentrations of carbon monoxide. Eleven miners died before they could be rescued and one was rescued although severely injured.

On January 19, 2006, a fire occurred at the belt take-up storage unit of the Aracoma Alma Mine #1, located near Logan, West Virginia, resulting in the deaths of two miners. Miners in the affected area began an evacuation and, after traveling some distance out of the mine, encountered smoke and donned their self-contained self-rescue (SCSRs) devices. The two miners who died had become separated from their crew while attempting to escape.

On May 20, 2006, an explosion occurred at the Kentucky Darby, LLC, Darby Mine No. 1, located near Holmes Mill, Kentucky. The forces from the explosion killed two miners. Four other miners attempted to evacuate and encountered thick smoke. At this point they donned their SCSRs and attempted to continue their evacuation. The miners eventually became separated and three died from carbon monoxide poisoning.

Based on the MINER Act, MSHA data and experience, and the NIOSH report, MSHA is proposing regulations that address the approval and use of refuge alternatives in underground coal mines.

II. Section-By-Section Analysis

A. Part 7 Approval

The proposal includes new requirements for approval of refuge alternatives for underground coal mines. The proposal also includes approval of components of refuge alternatives. Under the proposal, manufacturers could apply for approval of a pre-fabricated self-contained refuge alternative or for approval of a refuge alternative component.

MSHA is proposing the approval requirements in part 7 to allow refuge alternatives or components to be tested by applicants or third-parties. MSHA has a 20-year history of administering this program, which has reduced product testing costs and improved approval efficiency. Under the proposal, the applicant, usually the manufacturer, would have to provide the required information and demonstrate that the refuge alternative or component meets the technical requirements and test criteria. Based upon an evaluation of this information, MSHA would issue an approval.

The proposal would: Provide alternatives for satisfying the requirements; provide performance-based approval criteria; and promote innovative new technology. The proposal addresses requirements for a pre-fabricated self-contained refuge alternative and components for a refuge alternative:

- Structural, which would create an isolated atmosphere and contain the other integrated components.
- Pre-fabricated self-contained rescue alternative.
- Breathable air, which would include the means to supply safe concentrations of oxygen and dilute harmful gases.
- Air-monitoring, which would provide occupants of the refuge alternative with devices to measure the concentrations of oxygen, carbon dioxide, carbon monoxide, methane, and other harmful gases.
- Harmful gas removal, which would provide for removal of harmful gases from the refuge alternative.

The refuge alternative would have to include provisions for sanitation, food, water, and first-aid. These items would have to be approved in the ERP.

The proposed requirements would assure that the refuge alternative could be used safely and effectively in underground coal mines and that the components could be used safely with each other.

All of the existing general provisions of subpart A of part 7 would apply to refuge alternatives. Existing § 7.8 addresses post-approval product audit and requires that, on request the approval-holder make a product available to MSHA for audit at no cost to MSHA, but no more than once a year except for cause. In addition, under existing § 7.8, an audit would be conducted at a mutually agreeable site and time. MSHA anticipates that in appropriate instances, the Agency would travel to the manufacturer's site particularly for pre-fabricated self-contained refuge alternatives and components. For refuge alternatives that are not pre-fabricated, i.e. constructed in place or materials pre-positioned, the structure would be approved by the District Manager in the Emergency Response Plan. Consistent with this requirement, the approval-holder must provide a refuge alternative or component to MSHA for audit.

Section 7.501 Purpose and Scope

This proposal would state that the purpose of approved refuge alternatives is to provide a life-sustaining environment for miners trapped underground when escape is impossible. The proposal would also define the scope as applying to underground coal mines. Under the proposal, refuge alternatives could also be used to facilitate escape by sustaining trapped miners until they receive communications regarding escape options or until rescuers arrive. MSHA considers refuge alternatives as a last resort to protect persons who are unable to escape from an underground coal mine in the event of an emergency. In its report on refuge alternatives, NIOSH recognized that the ''potential for refuge alternatives to save lives will only be realized to the extent that mine operators develop comprehensive escape and rescue plans that incorporate refuge alternatives.''

Refuge alternatives that states have approved and those that MSHA has accepted in approved ERPs would meet the requirements of this proposed rule. When mine operators replace these refuge alternatives or components, the new refuge alternatives or components must meet the requirements of the proposed rule. Based on preliminary discussions with manufacturers, MSHA used the estimated service life of the pre-fabricated self-contained refuge alternative. This would allow refuge alternatives to be used until replaced or 10 years maximum. This would allow refuge components to be used until replaced or 5 years maximum. MSHA solicits comments on the estimated service life of the pre-fabricated self-contained units. Comments should be specific, including alternatives, rationale, and supporting data.

Section 7.502 Definitions

The proposed rule includes several definitions to assist applicants in preparing applications for approval. Because refuge alternatives represent a relatively new technology for underground coal mines, the terminology may not be widely used. MSHA intends that these definitions would facilitate the mining community's understanding of the proposal.

Apparent temperature.

MSHA proposes to define *apparent temperature* as the combined effects of air movement, heat, and humidity on the human body. When no air movement is present, the apparent temperature equals the heat index. As heat and humidity increase, the amount of evaporation of sweat from the body decreases. The international scientific community generally recognizes a maximum safe apparent temperature of 95° Fahrenheit (F) in confined survival environments,[1] such as a refuge alternative. Body heat is the primary heat source in a refuge alternative and the humidity will likely be high in such a sealed environment. The carbon dioxide absorption process also generates heat and humidity. There is currently no permissible air conditioning equipment, which will overcome this problem in underground coal mines.

Breathable oxygen.

MSHA proposes to define *breathable oxygen* as oxygen that is at least 99 percent pure with no harmful contaminants. Acceptable breathable oxygen is frequently supplied from a compressed gas cylinder as U.S. Pharmacopoeia medical oxygen or as aviator breathing oxygen. This definition is consistent with the attachment to MSHA's PIB P07–03: ''Methods for Providing Breathable Air.'' MSHA solicits comments on the proposed definition. Comments should be specific, including alternatives, rationale, and supporting data.

Flash fire.

MSHA proposes to define *flash fire* as a fire that rapidly spreads through a diffuse fuel, such as airborne coal dust or methane, without producing damaging pressure. Flash fire may occur in an environment, such as an underground coal mine, where fuel and air become mixed in adequate concentrations to combust. In an underground coal mine, a flash fire can be a rapidly moving flame front from a

[1] 1 R.G. Steadman (1979).

combustion explosion. In its report, NIOSH recommended that the fire resistance for refuge alternatives be 300 °F for 3 seconds. They based this recommendation on NFPA–2113, but advised that additional investigation is warranted. A flash fire is defined by the National Fire Protection Association (NFPA 2113) as:

> A fire that spreads rapidly through a diffuse fuel, such as dust, gas, or vapors of an ignitable liquid, without the production of damaging pressure.

NFPA 2113 also includes a longer explanation of flash fire in the Annex A.3.3.16. This explanation addresses flame temperatures for diffused fuel flash fires ranging from 1000° to 1900 °F.

Noncombustible material.

MSHA proposes to define *noncombustible material* as material that will not ignite, burn, support combustion, or release flammable vapors when subjected to fire or heat.

Overpressure.

MSHA proposes to define *overpressure* as the pressure above the background atmospheric pressure. For example, air pressure in a car tire is measured with a pressure gauge as 30 psi, which is an overpressure. The absolute pressure of the air inside the tire is 44.7 psi which is 14.7 psi or one atmosphere higher. Explosion pressures are normally expressed as an overpressure beyond standard atmospheric pressure.

Refuge alternative.

MSHA proposes to define *refuge alternative* as a protected, secure space with an isolated atmosphere and integrated components that create a life-sustaining environment for persons trapped in an underground coal mine.

The proposed rule addresses refuge alternatives that consist of a protective structure, an airlock, an interior space, and components that provide for breathable air, air monitoring, and harmful gas removal. The refuge alternative would also include provisions for sanitation, lighting, communications, food and water, and first aid.

Section 7.503 Application Requirements

Proposed paragraph (a) would require that an application include information to assure that MSHA can determine if a refuge alternative or component meets the technical requirements for approval, functions as intended, and is safe for use in an underground coal mine.

Paragraph (a)(1) would require the application to contain the refuge alternative or component's make and model number, if applicable. This provision would assist MSHA in identifying specific units or parts from different companies.

Paragraph (a)(2) would require that the application list the refuge alternative or component's parts, including the MSHA approval number for electric-powered equipment; each component's or part's in-mine shelf life, service life, and recommended replacement schedule; and the materials used in each component or part with their MSHA approval number or a statement that the materials are noncombustible. This proposed provision would assure that materials are safe for use in an underground coal mine. The hazardous nature of an underground coal mine requires that sources of ignition be eliminated. MSHA may have approved some equipment as intrinsically safe or permissible that may be used in a refuge alternative component. The confined space of an underground coal mine necessitates that materials be designed so that they will not contribute to a fire or give off harmful gases when exposed to heat.

Paragraph (a)(3) would require the application to specify the capacity and duration (the number of persons it is designed to maintain and for how long) of the refuge alternative or component on a per-person per-day basis. For example, the application would need to include the specific number of persons and a specific length of time that the refuge alternative or component could support. The application also would need to contain this same information for food, water, lighting, sanitation, and any other materials that must be provided to assure proper use of the refuge alternative or component. This information is necessary so that MSHA can appropriately evaluate the performance of the refuge alternative or component and determine if it meets the requirement that it sustain persons for 96 hours.

Paragraph (a)(4) would require the application to specify the length, width, and height of space required for storage of each component. MSHA needs this information for components approved separately to assure that the refuge alternative will have enough usable space for occupants when all components are stored.

Paragraph (b) would require that the application include additional information for the refuge alternative. This specific information is necessary for the applicant or third party to perform an adequate evaluation of the refuge alternative and for MSHA to approve the refuge alternative or component.

Paragraph (b)(1) would require the application to describe the breathable air component, including drawings, air-supply sources, piping, regulators, and controls. This information is necessary for the applicant to demonstrate that all systems are included and in their proper location, to assure proper functioning of this component.

Paragraph (b)(2) would require the application to specify the maximum volume of the refuge alternative, excluding the airlock; the dimensions of usable space provided for each person; and the interior dimensions of the airlock. This information is necessary to demonstrate that there is adequate usable space when all systems and components are shown in their respective place.

Paragraph (b)(3) would require the application to specify the maximum allowable positive pressures of the refuge alternative and airlock and describe the means used to limit or control the positive pressure in the refuge alternative and airlock. Information on the refuge alternative and airlock is essential for MSHA to determine whether the atmospheric pressure in the refuge alternative will maintain good air as miners enter and pass through the airlock. The information will be used to demonstrate that the pressure will be adequate for the intended purpose but not excessive, which could create adverse physiological effects for the miners.

Paragraph (b)(4) would require that the application specify the maximum allowable apparent temperature of the interior space of the refuge alternative and airlock and describe the means used to control the apparent temperature in the refuge alternative and airlock. This information provides a basis to determine whether the refuge alternative will protect miners from heat stress. Data show that apparent temperatures greater than 80 °F are generally associated with some discomfort. Medical evidence reveals that values approaching or exceeding 105 °F would be life-threatening, resulting in severe heat exhaustion or possible heatstroke if exposure is prolonged or physical activity high. The degree of heat stress would vary with age, health, and body characteristics.

Paragraph (b)(5) would require that each application include drawings that show the features of each component and contain sufficient information to document that each component meets the technical requirements of this subpart. Drawings of each component would illustrate the internal configuration of the refuge alternative. Under the proposal, this information

would include the dimensions and layout of the refuge alternative components, controls, and materials necessary for proper operation. This information is necessary for the applicant or third party to make an appropriate and informed evaluation and of the unit to provide a basis for MSHA approval of the refuge alternative or component.

Paragraph (b)(6) would require that the application include essential information or instructions, such as a training manual that contains sufficient detail to train personnel to transport, operate, and maintain the refuge alternative or component. MSHA recognizes that, as a general practice, manufacturers provide users with information necessary for safe and effective use of their products. Under the proposal, the applicant would be required to develop a training manual for each refuge alternative or component.

Paragraph (b)(7) would require a summary of the procedures for constructing and activating refuge alternatives. MSHA recognizes that, as a general practice, manufacturers provide users with information necessary for safe and effective use of their products. This summary information would include all of the steps and procedures to construct and activate a refuge alternative. This information would be used in evaluating the approval and for instruction in the construction and activation of refuge alternatives.

Paragraph (b)(8) would require a summary of the procedures related to using refuge alternatives. This summary information would include steps and procedures for using the refuge alternative during a substantial period of time. This information would be used in evaluating the approval and for instruction in using the refuge alternatives.

Paragraph (b)(9) would require that the application contain the results of inspections, evaluations, calculations, and tests conducted under this subpart. MSHA would use this information to evaluate the effectiveness and compatibility of refuge alternative components. For example, the application would contain the calculation of the rate oxygen is delivered on a per person basis and the results of tests, including calculations, of the carbon dioxide removal (scrubbing) to demonstrate that the refuge alternative will maintain a safe atmosphere for 96 hours.

Paragraph (c) would require that the application for the air-monitoring component include additional information. This information is necessary for the applicant or third party to make an effective evaluation of the component to provide a basis for MSHA approval of the air-monitoring component.

Paragraph (c)(1) would require that the application specify the types of sensors, their operating ranges, the gases measured, and any environmental limitations including the cross-sensitivity of each detector or device to other gases. This information on the air-monitoring component is essential for MSHA to determine that persons inside the refuge alternative will be aware of the concentrations of carbon dioxide, carbon monoxide, and methane, inside and outside the refuge alternative, including the airlock. In addition, this will assure that oxygen concentrations can be monitored simultaneously.

Paragraph (c)(2) would require that the application include the method for operation of each device so that it functions as necessary to test gas concentrations over a 96 hour period. This information will assist MSHA's evaluation of whether the air-monitoring component can sustain persons for 96 hours. The Agency recognizes that different types and combinations of instruments from several manufacturers may be used in an air-monitoring component. MSHA needs to assure that the different components are available and will provide reliable monitoring of breathable air as necessary over the 96-hour period. MSHA believes that a properly designed system would control gas concentrations inside the refuge alternative. The intent of this provision is that detectors would be used to periodically check gas concentrations in the refuge alternative and provide miners with this information.

Paragraph (c)(3) would require that the application include procedures for monitoring and maintaining breathable air in the airlock, before and after purging. Under the proposal, breathable air must be provided in the airlock at all times. However, when miners enter the airlock following an emergency, it will be necessary to monitor and purge the air to remove any contaminants and minimize contamination inside the refuge alternative as miners pass through the airlock into the interior space.

Paragraph (c)(4) would require that the application include instructions for determining the quality of the atmosphere in the airlock and interior of the refuge alternative and a means to maintain breathable air in the airlock. The quality of air inside the refuge alternative is vital to sustain trapped miners. The procedures for using the air-monitoring component are essential for MSHA to determine whether the component provides adequate means for trapped miners to verify the quality of the air inside and outside the refuge alternative.

Paragraph (d) would require that the application specify the volume of breathable air available for removing harmful gas, both at start-up and while persons enter or exit through the airlock; and the maximum volume of each gas that the component is designed to remove on a per-miner per-day basis. Information on harmful gas removal is essential for MSHA to determine the ability of the refuge alternative to sustain occupants for 96 hours. The purpose of this component is primarily to remove carbon dioxide exhaled by the occupants. MSHA also intends that this component be capable of removing toxic and irritant gases, fumes, mists, and dusts that may enter the refuge alternative through the airlock.

Paragraph (e) would require that the applicant certify that each component is constructed of suitable materials, is of good quality workmanship, is based on sound engineering principles, is safe for its intended use, and is designed to be compatible with other components in the refuge alternative, within the limitations specified in the approval. This information is needed to assure that the application, test results, and construction quality are complete and accurate.

Section 7.504 Refuge Alternatives and Components; General Requirements

Proposed § 7.504 provides general safety and health requirements for refuge alternatives and components.

Paragraph (a)(1) would require refuge alternatives and components to be intrinsically safe for use in an underground coal mine and designed with fire and explosion-proof features for use with an oxygen supply component. This requirement would assure that the refuge alternative or component does not contribute to a secondary fire or explosion.

Paragraph (a)(2) would require that a refuge alternative or component not produce noise levels in excess of 85 dBA in the structure's interior. Noise above this level can be irritating and interferes with communication. Exposure to noise at or above the 85 dBA level could adversely affect hearing. Based on MSHA's knowledge, noise controls such as dampening material are available to control noise levels.

Paragraph (a)(3) would require that the refuge alternative or component not liberate harmful or irritating gases or

particulates into the structure's interior or airlock. Some materials off-gas when heated. Vapors, aerosols or particulates should not be released into the refuge alternative. The proposed rule would require that materials used in a refuge alternative or component be tested and evaluated to determine that nonmetallic materials do not release irritating odors or toxic gases when subjected to a flash fire test. The application would have to include the results of the tests and evaluation.

Paragraph (a)(4) would require that the refuge alternative or component be designed to be moved safely with devices such as tow bars. MSHA recognizes that refuge alternatives could be a hazard to miners during transport if not properly designed and if miners are not adequately trained. Based on MSHA's experience, inadequate rigging and towing devices could cause accidents to miners. The refuge alternative should be designed with proper connections and devices to eliminate or reduce the use of chains, ropes, and slings. In addition, miners would need training on how to move a refuge alternative to avoid injury.

Paragraph (a)(5) would require that the refuge alternative and components be designed to withstand damage during transport and handling. The proposed rule would require that designs incorporate bumpers, guarding, skids, packing and securing devices, and rigging components. Additionally the components and supplies must be configured, arranged, and stored to minimize shifting, movement, or damage during handling and routine transport. Training would incorporate precautions to prevent damage to the refuge alternatives and components while storing, handling, and transporting the equipment.

Paragraph (b) would require that the apparent inside temperature be controlled to prevent heat stroke. The miners will produce heat within the confined space of the refuge alternative. The chemicals used to remove carbon dioxide also generate heat. Over time, the heat build-up could produce heat stroke. NIOSH stated that—

> Apparent temperature is a measure of heat stress, but other indices or standards could be used, such as the wet bulb globe temperature. Regardless of the index selected, the numerical value must be assigned to prevent heat stroke.

Paragraph (b)(1) would require that, when used in accordance with the manufacturer's instructions and defined limitations, the apparent temperature in the fully occupied refuge alternative not exceed 95° Fahrenheit. The apparent temperature is a measure of relative discomfort due to the combined effect of heat and humidity. The concept of apparent temperature was developed by R.G. Steadman (1979) and is based on physiological studies of evaporative skin cooling for various combinations of ambient temperature and humidity. At higher dew-points, the apparent temperature exceeds the actual temperature and measures the increased physiological heat stress and discomfort associated with higher than comfortable humidity.

The likelihood of adverse effects from heat may vary with a person's age, health, and body characteristics; however, apparent temperatures greater than 80 °F are generally associated with some discomfort. Temperatures in excess of 105 °F are considered life-threatening, with severe heat exhaustion or heatstroke possible after prolonged exposure or significant physical activity. There is a general consensus among researchers that the apparent temperature within a confined space occupied by humans should not exceed 95 °F.[2]

MSHA recognizes that body heat and heat generated by chemical reactions (i.e., CO_2 scrubbing chemicals) are inherent heat-producing sources within a refuge alternative. Ambient temperature in a refuge alternative also is affected by the mine temperature compounded by high humidity in the sealed environment. High humidity reduces a body's ability to regulate temperature by sweating, which could result in a dangerously elevated internal body temperature.

Paragraph (b)(2) would require that calculations or tests be conducted to determine the maximum apparent temperature in the refuge alternative when used at maximum occupancy and in conjunction with required components calculations or test results. In addition, the proposed rule would require that an application include test results and calculations to demonstrate that the apparent temperature within the refuge alternative would not exceed 95 °F when used in conjunction with required components and fully occupied.

MSHA requests specific comments on the apparent temperature and mitigation of heat stress and heat stroke. Comments should address the generation of heat and the methods for measuring heat stress on persons occupying the refuge alternative. Comments should be specific including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and supporting data.

Paragraph (c) would require that refuge alternatives include a number of auxiliary requirements to enhance the safety and survival of persons in a refuge alternative. These requirements would include a means for communicating with persons outside, lighting, and first aid, and provisions for food, water, and sanitation.

Paragraph (c)(1) would require that refuge alternatives accommodate communications. Paragraphs (c)(1)(i) and (ii) would require that refuge alternative accommodate a telephone or an equivalent two-way communication facility that can be used from inside the refuge alternative, or a two-way wireless system when it is approved in the operator's Emergency Response Plan (ERP). Manufacturers would need to provide suitable ports, connections, jacks, and fittings for communication equipment, and ports and connections would need to be designed for electrical permissibility and maintaining air quality (gas tight cable entries) within the refuge alternative.

MSHA requests comments on including a requirement that refuge alternatives be designed with a means to signal rescuers on the surface. This would assure that rescuers on the surface could be contacted if the communications systems become inoperable. This signal would be similar to what miners had done in the past by hammering on the roof, ribs, or floor to create sounds that can be detected by seismic devices located on the surface. A signaling device would need to be configured to produce a sound on the roof, ribs, or floor while maintaining the isolated atmosphere. Comments should be specific, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and supporting data.

MSHA requests comments on including a requirement that the manufacturer design refuge alternatives with a means to signal underground rescuers with a homing device. This would assure that rescuers could detect the trapped miners within the mine. Comments should be specific, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and supporting data.

Paragraph (c)(2) would require that refuge alternatives include lighting sufficient to perform tasks. Lighting that generates significant heat, or requires continual manual power for light generation, would be unacceptable. Light is essential to allow persons to read instructions, warnings, and gauges;

[2] U.S. Department of Defense, National Aviation and Space Administration, Canadian, Australian, and the United Kingdom.

operate gas monitoring detectors; and perform other activities related to the operation of the refuge alternatives. MSHA recommends a minimum of 1 foot candle of lighting be provided per miner per day.[3] The manufacturer or approval holder would have to measure the number of foot candles provided per miner per day and report this information in the refuge alternative's manual.

MSHA requests comments on the types, sources, and magnitude of lighting needed for the proper functioning of a refuge alternative and the needs of the occupants. Comments should be specific, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and supporting data.

Paragraph (c)(3) would require that refuge alternatives include a means to effectively contain human waste and minimize objectionable odors. Information regarding the sanitation would assure that the manufacturer or approval holder has included an adequate means for containing waste.

The proposed provisions on sanitation would encompass containment and disposal of waste. This provision would also require a means for operation and use, and a means, such as a plastic bag and closed receptacle, to contain the waste to prevent objectionable odors from being detected within the interior space. Provisions should include individually packaged sanitation supplies, including toilet paper and hand sanitizer. The manufacturer or approval holder would have to measure the length, width, and height of the container housing the sanitation component and report this information, together with operating instructions, in the refuge alternative's manual.

Paragraph (c)(4) would require that refuge alternatives include first aid supplies to treat injuries. The provision would assure that a sufficient quantity of first aid supplies are available for injured miners.

Paragraph (c)(5) would require that refuge alternatives be stocked with materials, parts, and tools for repairs of components. This requirement would assure that refuge alternative manufacturers provide a repair kit with necessary materials and appropriate tools to perform repairs. This should include adequate tools, metal repair materials, fiber material, adhesives, sealants, tapes, and general hardware (i.e., screws, bolts, rivets, wire, zippers and clips). Powered tools must be intrinsically safe and permissible.

Paragraph (d) would require that containers used for storage of refuge alternative components be airtight, waterproof, and rodent-proof; easy to open and close without the use of tools; and conspicuously marked with an expiration date and instructions for use of the component. This requirement would assure that the containers' contents are useable when needed. Some contents should be individually packaged and stored in containers. For example, food and water should be provided in individual, disposable packages and stored in a container.

Section 7.505 Structural Components

Proposed § 7.505 Addresses the Structural Components Required for Refuge Alternatives

Paragraph (a)(1) would require that refuge alternatives provide a minimum of 15 square feet of usable floor space and a minimum of 60 cubic feet of usable volume per person. MSHA believes that these proposed minimums are necessary to provide adequate room for miners using the refuge alternative. Usable space or volume means space or volume without stored items. The space and volume requirements are exclusive of the airlock space and volume. NIOSH design parameters recommended 15 square feet and 85 cubic feet per miner. NIOSH stated that these recommendations were not to be considered absolute.

Under this proposed provision, a space of 6 feet of length and 2.5 feet of width would amount to 15 square feet. If the same area has a height of 4 feet, the miner would be provided with 60 cubic feet of space. For mines with lower heights, the 60 cubic feet of space may need to be attained by increasing the length or floor area.

MSHA solicits comments on these minimum space and volume requirements. Comments should be specific, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and supporting data.

The area cannot be determined solely by the number of miners that would be using the refuge alternative. Miners would need some free space to operate components, drink, eat, and use the sanitation facilities—and tend to injuries. Additional space may be needed for suspended curtains, as part of a passive system CO_2 removal system. Also larger volumes seem to be more effective at dissipating heat.

Paragraph (a)(2) would require that refuge alternatives include storage space for securing and protecting the components during transport and that permits ready access to components for inspection, maintenance, and activation.

The proposed rule is intended to provide adequate storage space in addition to the usable space required for persons occupying the unit. The storage space is required for the supplies in containers. The containers need to be secured to prevent movement during transport. The supplies should be located to provide usable space for miners and to be accessible for inspection while the refuge alternative is stored. The components should be positioned to allow for visual checks for availability, readiness and shelf life dates.

Paragraph (a)(3) would require that refuge alternatives include an airlock that creates a barrier to isolate the interior space from the mine atmosphere, except for a refuge alternative capable of maintaining adequate positive pressure. The intent of this provision is to provide breathable air to miners entering the refuge alternative if the mine atmosphere is contaminated. The miners would need to go into the refuge alternative through an airlock supplied with breathable air. The airlock would minimize the amount of contaminated mine air that could enter the interior space of the refuge alternative. The airlock would need to have positive pressure to prevent the contaminated atmosphere from entering the airlock when the outside door is opened. Conversely when the inside door of the airlock is opened, the air inside the airlock should not readily enter the interior space of the refuge alternative. Pressures need to be different between the interior space, airlock space and mine atmosphere. Pressures need to be incrementally higher in the interior space as compared to the airlock and the airlock pressure needs to be higher than the mine atmosphere. Miners will pass through the airlock via airtight doors into the interior space.

The proposed rule includes an exception for an airlock if the refuge alternative is capable of maintaining adequate positive pressure. The positive pressure would prevent outside air from contaminating the refuge alternative, therefore an airlock would not be necessary.

Paragraph (a)(3)(i) would require that the airlock be designed to be used multiple times to accommodate the structure's maximum occupancy. This provision would assure access for the number of persons for which the refuge alternative is designed.

[3] MIL–STD–1472F, Lighting for bomb shelters, NOTICE 1,05 December 2003.

Paragraph (a)(3)(ii) would require that the airlock be configured to accommodate a stretcher without compromising the airlock's function. Following a mine accident, miners that would use the refuge alternative may be injured and transported on a stretcher. The airlock would need to be an adequate length to accommodate the stretcher (with injured miner) in the airlock with the outside door closed (to allow the interior door to be opened for access to the interior space).

Paragraph (a)(4) would require that refuge alternatives be designed and constructed to withstand 15 pounds per square inch (psi) overpressure for 0.2 seconds prior to activation. Proposed paragraph (a)(5) would require that refuge alternatives be designed and constructed to withstand exposure to a flash fire of 300 °Fahrenheit for 3 seconds prior to activation.

Paragraphs (a)(4) and (a)(5) would assure that the refuge alternative would be able to withstand an initial explosion and fire. These provisions would also assure that the components are not damaged and are able to function as intended.

Paragraph (a)(6) would require that refuge alternatives be constructed with materials that are noncombustible or MSHA-approved flame-resistant. MSHA tests for flame resistance of brattice cloth under 30 CFR 7.27 could be used to determine the flame resistance of noncombustible materials in refuge alternatives. Materials under this provision could include, but would not be limited to inflatable stoppings, inflatable shelters, and any materials providing a barrier used to protect the inside atmosphere from the hazardous outside atmosphere. Materials are generally tested for noncombustibility under ASTM E 136 ''Standard Test Method for Behavior of Materials in a Vertical Tube Furnace at 750 Degrees C'' (2004), although a similar ISO test, ''ISO 1182:2002'' also exists.

Paragraph (a)(7) would require that refuge alternatives be constructed from reinforced material that has sufficient durability to withstand routine handling and resist puncture and tearing during activation and use. Refuge alternatives need to be capable of withstanding the harsh mining environment and require materials to withstand abrasion, tears and punctures during handling and activation. This especially applies to inflatable-type stoppings and tent refuge alternatives. These materials must be made to isolate areas without compromising the interior atmosphere of the refuge alternative.

Paragraph (a)(8) would require that refuge alternatives be guarded or reinforced to prevent damage that would hinder activation, entry, or use. This paragraph would assure the refuge alternative design incorporates protective features to protect the integrity of the barrier and operation of doors, inflatable extensions of the refuge alternative, or any other functions necessary to use the refuge alternative.

Paragraph (a)(9) would require that refuge alternatives be designed to permit measurement of outside gas concentrations without exiting the structure or allowing entry of the outside atmosphere. Miners would need to conduct gas monitoring of the atmosphere outside of the isolated interior space to monitor harmful gas levels outside the refuge alternative when there is a lack of communication with rescuers and the occupants are considering whether evacuation is a viable option. To assure the safety of the miners, the design should incorporate methods or equipment that can monitor outside of the interior space without contamination.

Proposed § 7.505(b) would address tests for the structural components required for refuge alternatives.

Paragraph (b)(1) would require that tests be conducted to determine or demonstrate that the refuge alternative can be constructed, activated and used as intended. Under this provision, trained persons would need to be able to fully activate the structure, without the use of tools, within 10 minutes of reaching the refuge alternative.

This provision would assure that miners can use the refuge alternative upon reaching it. Following an accident, the first actions of the miners are to attempt to evacuate wearing SCSRs. In a worst-case scenario, only one SCSR may be available to provide 60 minutes of breathable air. The first 30 minutes would enable the miner to attempt to evacuate and return to the refuge alternative if escape is impossible. If the miner cannot escape, and returns to a refuge alternative, the miner would have 10 minutes to establish a barrier between the interior and exterior atmospheres. The remaining 20 minutes of breathable air provided by the SCSR will allow refuge alternative purging to establish a breathable air atmosphere. It is expected that the testing under this paragraph would be conducted using simulated real-life situations and conditions, such as smoke, heat, humidity and darkness using SCSRs.

Paragraph (b)(2) would test that an overpressure of 15 psi applied to the pre-activated refuge alternative structure for 0.2 seconds would not allow gases to pass through the barrier separating the interior and exterior atmospheres. Paragraph (b)(3) would test that a flash fire of 300° Fahrenheit for 3 seconds would not allow gases to pass from the outside to the inside of the structure.

Paragraphs (b)(2) and (b)(3) would assure that the refuge alternative is tested to verify that it will withstand an initial explosion and fire. It would also assure the structure and components are intact following a fire or explosion. The testing should demonstrate that the integrity of the barrier and operation of doors is maintained.

MSHA tests for flame resistance of brattice cloth at 30 CFR 7.27 could be used to determine the flame resistance of noncombustible materials in refuge alternatives. Materials under this provision could include, but would not be limited to inflatable stoppings, inflatable shelters, and any materials providing a barrier used to protect the inside atmosphere from the hazardous outside atmosphere. Materials are generally tested for noncombustibility using ASTM E 136 ''Standard Test Method for Behavior of Materials in a Vertical Tube Furnace at 750 Degrees C'' (2004), although a similar ISO test, ''ISO 1182:2002'' also exists.

Paragraph (b)(4) would test that the expected overpressure forces do not prevent the stored components from operating. Paragraph (b)(5) would test that a flash fire does not prevent the stored components from operating. Paragraphs (b)(4) and (b)(5) would assure that refuge alternatives are tested to demonstrate that they will withstand an initial explosion and fire. Additionally, the test should assure that an isolated atmosphere is provided for the miners and the components are not damaged and are able to function as intended.

Paragraph (b)(6) would require testing to demonstrate that each structure resists puncture and tearing when tested in accordance with ASTM D2582–07 ''Standard Test Method for Puncture-Propagation Tear Resistance of Plastic Film and Thin Sheeting.'' This provision will test the capability of material used to construct the refuge alternative. The material must withstand the harsh mining environment and abrasion, tears, and punctures during handling, transportation and activation. This especially applies to inflatable-type stoppings and tent refuge alternatives. These materials must be made to maintain barriers without compromising the atmosphere established on the interior of the refuge alternative.

Paragraph (b)(7) would require that each reasonably anticipated repair can be completed within 10 minutes of opening the storage space for repair

materials and tools. The inflatable-type refuge alternative has the potential to be ripped, torn or develop a leak. The refuge alternative must maintain an isolated atmosphere at all times. If a leak or tear occurs, the miners should be able to repair it with little delay or their safety could be jeopardized. The test would demonstrate that a miner would be able to make a repair, such as mending a tear or resealing the fabric, within 10 minutes of opening the storage space.

Paragraph (b)(8) would require that nonmetallic materials used to construct the refuge alternative, not release harmful gases or noticeable odors before or after the flash fire test. The test would determine the identity and concentrations of gases released. This provision would require a test of the material used to construct the refuge alternative to assure that the materials do not emit noticeable odors that may sicken the miners occupying the refuge alternative. The testing should include provisions and instruments for detecting any released gases. Materials (i.e., paints, plastics, fiber, etc.) used in the manufacturing of the refuge alternative should not release harmful fumes, vapors, or gases.

Proposed § 7.505(c) addresses refuge alternatives that use pressurized air to activate the structure or maintain its shape.

Paragraph (c)(1) would require a pressure regulator or other means to prevent over-pressurization of structures that use pressurized air to activate the structure or maintain its shape. Over-pressurization of the interior space or airlock space would be detrimental to the safety of the miners. The regulator should be designed to assure that proper relief of overpressure can be accomplished.

Paragraph (c)(2) would require inclusion of a means to repair and repressurize the structure in case of failure of the structure or loss of air pressure. If the inflatable-type structure is damaged or leaks, it will need repair and additional compressed air to establish the pressure and volume of air that was lost.

Proposed § 7.505(d)(1) would require that refuge alternatives be designed such that pre-shift examination of the components critical for activation can be conducted without entering the structure. Paragraph (d)(2) would require that a refuge alternative be designed to provide a means to indicate unauthorized entry or tampering. Paragraphs (d)(1) and (d)(2) would assure that the refuge alternative is designed to allow for all necessary inspections. The gauges and controls for critical components, such as compressed air and oxygen, should be easy to observe to determine the readiness of those components.

Section 7.506 Breathable Air Components

Paragraph (a) would require that breathable air be supplied by compressed air cylinders, compressed breathable-oxygen cylinders, fans installed on the surface or compressors installed on the surface. Only uncontaminated breathable air is allowed to be supplied to the refuge alternative.

Maintaining breathable air inside the refuge alternative is vital to sustain persons trapped underground. Currently MSHA will accept compressed air cylinders and compressed breathable-oxygen cylinders as a means to supply breathable air in underground coal mines. MSHA will also accept fans or compressors installed on the surface as a means to supply breathable air in these mines. The proposed rule addresses MSHA's need to evaluate whether breathable air components will meet the requirement for sustaining persons for 96 hours in a refuge alternative. Provisions regarding the proper use of approved breathable air components are important for MSHA to use in determining that a component will provide adequate air inside the refuge alternative.

The Agency recognizes that different types and combinations of breathable air components from several manufacturers may be used to provide breathable air for refuge alternatives. MSHA needs to assure that these components and combination of components are reliable and ready to use for maintaining persons as necessary over the 96-hour period.

Paragraph (b) would require that mechanisms be provided and procedures be followed within the refuge alternative such that (1) breathable air sustain each person for 96 hours; (2) the oxygen concentration be maintained at levels between 18.5 and 23 percent; and (3) the average carbon dioxide concentration be maintained at 1.0 percent or less, with excursions not to exceed 2.5 percent.

Paragraph (b)(1) addresses MSHA's need to evaluate the effectiveness and compatibility of the breathable air components to assure that the supply of breathable air is sufficient to sustain persons occupying the refuge alternative for 96 hours. In MSHA's February 8, 2007, Program Information Bulletin No. P07–03, (PIB P07–03), MSHA addressed that the Agency considered 96 hours to be necessary. MSHA concluded that a 96-hour supply was warranted, and accordingly, the Agency is proposing 96 hours as a time that breathable air would need to be provided. MSHA solicits comments on the proposed 96-hour supply of breathable air. Comments should be specific, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and supporting data.

In arriving at this 96-hour minimum, MSHA reviewed recent and historical data on entrapments. While it is clear that refuge alternatives can save the lives of trapped persons, it was not clear how long refuge alternatives should be capable of sustaining miners. The depth of the mine, the geology of the overburden, and the terrain above the mine significantly affects rescue activities.

Paragraph (b)(2) would require that mechanisms be provided and procedures be followed within the refuge alternative such that the oxygen concentration be maintained at levels between 18.5 and 23 percent. In this subpart, MSHA is defining breathable oxygen as oxygen that is at least 99 percent pure with no harmful contaminants. Acceptable breathable oxygen is frequently supplied from a compressed gas cylinder as U.S. Pharmacopoeia medical oxygen or as aviator breathing oxygen. In addition, consistent with NIOSH's recommendation, the Agency proposes that breathable air contain an oxygen concentration between 18.5 and 23 percent.

Paragraph (b)(3) would require that the average carbon dioxide concentration be maintained at 1.0 percent or less, with excursions not to exceed 2.5 percent. In this subpart, MSHA proposes that breathable air contain no harmful quantities of asphyxiant, irritant, or toxic gases, fumes, mists, or dusts. This is consistent with NIOSH's recommendation. The provision proposes that the carbon dioxide concentration not exceed a 1.0 percent time weighted average over the rated duration of the refuge alternative with excursions not to exceed 2.5 percent.

MSHA is assuming that breathing rates for miners who have reached refuge alternatives would consist of activity levels of 4/5 at rest and 1/5 moderate activity. Therefore, using the respiratory quotient, which is the ratio of CO_2 that expelled to O_2 consumed, the average carbon dioxide generation is 1.08 cubic feet per hour per person. These breathing rates were based upon the U.S. Bureau of Mines Foster Miller Report of 1983, ''Development of

Guidelines for Rescue Chambers,'' Volume I (Foster Miller report).

The Agency recognizes that in an enclosed space, miners may die from the effects of CO_2 rather than the effects of O_2 deficiency. In PIB P07–03, MSHA demonstrated the rate at which a person would overexpose from carbon dioxide if carbon dioxide were not removed from the environment. MSHA used air supply calculations and activity levels based upon information provided in the Foster Miller report. The Agency used a hypothetical sealed enclosed space with a volume of 1,800 cubic feet (20 feet long, 18 feet wide and 5 feet high) that contained one person. The initial air quality was assumed to be 19.5% O_2, and 0.03% CO_2, and the breathing rate (4/5 at rest and 1/5 moderate activity) for oxygen inhaled is 0.022 cubic feet per minute per person.

For this example, MSHA found that one miner could be maintained 49.5 hours in an enclosed space with 1,800 cubic feet and initial air quality of 19.5% O_2, and 0.03% CO_2. This equates to 1.65 minutes per cubic foot of enclosed space (volume). Correspondingly, 10 miners could be maintained in a 1,800 cubic foot space for 4.95 hours before the CO_2 concentration reached the defined unacceptable level. In addition, 10 miners in the above defined 1,800 cubic feet volume would reach 10% CO_2 and resulting unconsciousness in approximately 16.6 hours. Unacceptable level for CO_2 would be 3% based on Peele Mining Engineers' Handbook and current MSHA Short Term Exposure Limits.

Paragraph (c) would require that breathable air supplied by compressed air from cylinders, fans, or compressors provide a minimum flow rate of 12.5 cubic feet per minute of breathable air for each miner. MSHA proposes to use 12.5 cubic feet per minute of breathable air as a required volume for each miner based on the amount of air needed for respiration and dilution of CO_2 and other harmful gases. In addition, the 12.5 cubic feet per minute flow rate would assure positive pressure to prevent contamination from the mine atmosphere. A maximum positive relief valve would need to be located in the refuge alternative. MSHA requests comments regarding the flow rate. Comments should be specific including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and supporting data.

MSHA considered the enclosed space as similar to a loose-hood respirator using supplied air. Flair Corporation Bulletin 270 revision H (4–01) indicates that OSHA requires a supply air of 6 to 15 cfm (360 to 900 cfm) for supplied air hoods (continuous flow supplied air respirators) to purge accumulated carbon dioxide. The 12.5 cfm per person fell within this range. Engineering handbooks recommend ventilation rates in the range 10–15 cfm of fresh air per person for offices with 12.5 cfm per person being the midpoint of this range. MSHA believes that these quantities are conservative. However, they are design parameters for a life support system, which demands a more cautious approach. In addition, compressor wear reduces performance and the system will become less efficient with age.

The Agency considers that the use of compressed air cylinders as the sole means of providing breathable air may be impractical and encourages mine operators to consider other options. As MSHA pointed out in PIB P07–03, a fan or equivalent method should be used to force fresh air into the hole with enough positive pressure to overcome total mine pressure to deliver sufficient quantities of breathable air. Compressor air intakes should be installed and maintained to assure that only clean, uncontaminated air enters the compressors. Mines should assure compressors have the capacity to deliver the required volume of air at the point of expected usage.

Paragraph (c)(1) would require that compressed air from cylinders, fans or compressors provide a minimum flow rate of 12.5 cubic feet per minute of breathable air for each miner. Fans or compressors would be required to (i) be equipped with a carbon monoxide detector located at the surface that automatically provides a visual and audible alarm if carbon monoxide in supplied air exceeds 10 ppm; (ii) provide in-line air-purifying sorbent beds and filters or other equivalent means to assure the breathing air quality and prevent condensation; (iii) include maintenance instructions that provide specifications for periodic replacement or refurbishment of sorbent beds and filters or alternate means; (iv) provide an automatic means to assure that the maximum allowable positive pressure is not exceeded in the refuge alternative; (v) include warnings to assure that only uncontaminated breathable air is supplied to the refuge alternative; (vi) include air lines to supply breathable air from the fan or compressor to the refuge alternative; and (vii) assure that harmful or explosive gases, water, and other materials cannot enter the breathable air. In addition, the proposal would require that air lines be capable of preventing or removing water accumulation, and be designed and protected to prevent damage during normal mining operations, a flash fire of 300° F for 3 seconds, a pressure wave of 15 psi overpressure for 0.2 seconds, and ground failure.

In PIB P07–03, MSHA provided a number of recommendations regarding hazards stemming from the use of compressors to provide breathable air underground. The Agency also acknowledges that these recommendations would apply to the use of fans used for the same purpose. As such, MSHA recommended that compressor air intakes should be installed to assure that only clean, uncontaminated air enters the compressors. Care should be exercised when using compressors in the vicinity of other equipment having gas or diesel engines. Gas engines emit carbon monoxide (toxic fumes) and diesel engines emit sulfur dioxide (noxious fumes) and nitrogen oxides. Compressors requiring oil can generate carbon monoxide (CO) internally which can be supplied inadvertently to miners. Oil-type compressors could be used; however, the air quality must be sampled and/or controlled using CO filtration. Oil-less compressors do not generate carbon monoxide; thus, no CO filtering is required.

Paragraph (c)(1)(i) would require carbon monoxide detectors for compressors or fans at the surface that automatically provide a visual and audible alarm if carbon monoxide in supplied air exceeds 10 ppm because compressors powered by gas engines emit carbon monoxide. Through the use of detectors at the surface, this provision is intended to assure that harmful levels of carbon monoxide would not be transferred into the refuge alternative from this equipment. MSHA is proposing to use the same early warning level for carbon monoxide in compressor supplied breathable air as established by OSHA, which will maintain uniformity in requirements for the use of such specialized equipment. MSHA believes warning operators when the CO level exceeds 10 ppm will help maintain safe breathable air in the refuge alternative. MSHA solicits comments on this provision including alternatives.

Paragraph (c)(1)(ii) would require in-line air-purifying sorbent beds and filters or other equivalent means to assure the breathing air quality and prevent condensation. Sorbent beds and filters would help assure that the air quality is maintained and condensation is prevented.

Paragraph (c)(1)(iii) would require maintenance instructions that provide specifications for periodic replacement or refurbishment of sorbent beds and filters or alternate means. Proper

maintenance and periodic replacement of sorbent beds and filters would help assure that the air quality is maintained and condensation is prevented.

Paragraph (c)(1)(iv) would require that fans or compressors provide positive pressure and an automatic means to assure that the pressure is relieved in the refuge alternative at 0.25 psi above mine atmospheric pressure. MSHA believes that positive pressure to exceed total mine pressure will prevent contamination and allow sufficient quantities of breathable air. The pressure should be adequate for the intended purpose, but not excessive where it creates adverse physiological effects for the miners. An automatic means, such as a relief valve set at 0.25 psi, should be provided to assure that the refuge alternative is not over-pressurized if breathable air is being supplied through a borehole or other means. The Foster Miller report specifies a minimum of 5 inches of water gage overpressure in the refuge alternative which is equivalent to approximately 0.18 psi. Currently, most manufactured refuge alternatives have relief valves set at 0.25 psi. Having too much pressure differential would make opening doors difficult for miners entering the refuge alternative. MSHA requests comments on the proposed setting for pressure relief and whether a higher pressure relief should be required. Comments should be specific including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and supporting data.

Paragraph (c)(1)(v) would require warnings to assure that only uncontaminated breathable air is supplied to the refuge alternative. This provision is intended to assure that only clean, uncontaminated air enters the compressors. Care should be exercised when using compressors or fans in the vicinity of other equipment having gas or diesel engines.

Paragraph (c)(1)(vi) would require that fans or compressors supplying breathable air underground include air lines to supply the air to the refuge alternative, that (A) air lines be capable of preventing or removing water accumulation, and that (B) air lines be designed and protected to prevent damage during normal mining operations, a flash fire of 300 °F for 3 seconds, a pressure wave of 15 psi overpressure for 0.2 seconds, and ground failure.

Proposed paragraph (c)(1)(vi)(A) is intended to prevent accumulation of water, which could affect the quantity and quality of breathable air provided underground. Moisture-laden air should not be pumped into the area where miners are trapped. If this moisture is not removed water could accumulate in the refuge alternative. All air supply systems must provide a means of preventing and removing the accumulation of water. MSHA anticipates air dryers with drain valves will be used. Air lines or pipes that are pre-installed must also be capped to prevent the entry of rain or moisture-laden air. If horizontal runs of air lines or pipes are used, they must be provided with a means to automatically drain any water accumulation.

Proposed paragraph (c)(1)(vi)(B) is intended to provide protection for lines that come from boreholes or air lines from the surface that are extended underground to a refuge alternative. This protection could consist of burying pipes by trenching deep enough to protect the pipes from mine traffic, explosions, ground movement or equipment damage.

Paragraph (c)(1)(vii) would assure that harmful or explosive gases, water, and other materials cannot enter the breathable air. When connecting equipment to boreholes that enter the mine, precautions must be taken to prevent explosive or harmful gases from entering the equipment supplying the breathable air. Harmful gases could contaminate filters or other components or collect in the equipment and affect the quality of the air being supplied to the trapped miners.

Paragraph (c)(2) would require redundant fans or compressors and power sources to permit prompt reactivation of equipment in the event of failure. It is crucial to maintain a continuous supply of breathable air to persons trapped underground and MSHA believes that redundant systems would assure that the supply is maintained in the event of failure of one of these systems.

Paragraph (d) would require that compressed, breathable oxygen (1) include instructions for activation and operation; (2) provide oxygen at a minimum flow rate of 1.32 cubic feet per hour per miner; (3) include a means to readily regulate the pressure and volume of the compressed oxygen; (4) include an independent regulator as a backup in case of failure; and (5) be used only with regulators, piping, and other equipment that is certified and maintained to prevent ignition or combustion.

Paragraph (d)(1) would require that compressed, breathable oxygen include instructions for activation and operation. This information will assure that mine operators have the proper information to correctly perform the tasks involving activating compressed oxygen cylinders. MSHA believes that failure to properly perform these tasks may imperil the lives of the miners within the refuge alternative. Instructions could include such items as checking for loose connections, leaking gas sounds, damage to hoses along their lengths or at their fittings, and broken gauges. The instructions would also help to assure that tanks are secured and pressure regulators are properly set and that wrenches and pliers will be in proper working order. Safe Use of Oxygen and Oxygen Systems: Guidelines for Oxygen System Design, Materials Selection, Operations, Storage, and Transportation, ASTM Stock No.: MNL 36.

Paragraph (d)(2) would require that compressed, breathable oxygen provides oxygen at a minimum flow rate of 1.32 cubic feet per hour per miner. MSHA is assuming that breathing rates for miners who are using a refuge alternative would reflect activity levels of 4/5 at rest and 1/5 moderate activity. Oxygen consumption at this assumed breathing rate would be 1.32 cubic feet per hour per person (0.022 cubic feet per minute per person). These oxygen consumption rates were based upon the U.S. Bureau of Mines Foster Miller Report of 1983, ''Development of Guidelines for Rescue Chambers,'' Volume I.

Paragraph (d)(3) would require that compressed, breathable oxygen provide a means to readily regulate the pressure and volume of the compressed oxygen. Regulating is necessary to assure that oxygen levels remain within the recommended values. In addition, all oxygen valves should be opened slowly to prevent the oxygen from heating.

Paragraph (d)(4) would require that compressed, breathable oxygen include an independent regulator as a backup in case of failure. It is crucial to maintain a continuous supply of breathable air to persons trapped underground. MSHA believes that redundant regulators would assure that the miners are maintained in the event of failure of one of these regulators. MSHA expects redundant oxygen control valves and regulators will be provided to assure continual availability of breathable oxygen. This provision is meant to assure that pre-connected valves and regulators are available. This will assure that miners will always have breathable air available in case of component failures.

Paragraph (d)(5) would require that compressed, breathable oxygen be used only with regulators, piping, and other equipment that is certified and maintained to prevent ignition or combustion. Components such as

piping, couplings, valves and regulators used to supply air to the refuge alternative must be maintained in operable condition and in accordance with manufacturer's recommendations. These components will likely be stored by the mine operator until needed for training or rescue operations. Improper storage of these components can lead to their corrosion or their contamination. Compressed oxygen components must not be used with previously used compressed air system components due to the fire and explosion hazards resulting from pure oxygen coming into contact with oil and grease that is inherent with used compressed air systems.

Paragraph (e) would require that carbon dioxide removal components (1) include instructions for activation and operation; (2) be used with breathable air cylinders or oxygen cylinders; (3) remove carbon dioxide at a rate of 1.08 cubic feet per hour per miner; (4) be contained to prevent contact with the chemicals and the release of airborne particles; (5) be provided and packaged with all necessary means to expedite use, such as hangers, racks, and clips; and (6) be stored in containers that are conspicuously marked with instructions for disposal of used chemicals.

Paragraph (e)(1) would require that carbon dioxide removal components include instruction for activation and operation. MSHA needs this information to assure that mine operators have the proper information to correctly perform tasks involving activating carbon dioxide removal components. Carbon dioxide is a natural asphyxiant produced through human respiration. To prevent the accumulation of harmful concentrations of carbon dioxide, scrubbing systems have been developed to chemically absorb the carbon dioxide. When entering a refuge alternative, miners would have to perform tasks to activate the carbon dioxide removal components. The miners would have to purge the atmosphere (in some cases), turn on the breathable air and maintain a viable atmosphere. Depending on the type of CO_2 removal system, instructions could include activation scheduling and proper handling of these materials. MSHA believes that failure to properly perform these tasks may imperil the lives of the miners within the refuge alternative.

Paragraph (e)(2) would require that carbon dioxide removal components be used with breathable air cylinders or oxygen cylinders. MSHA needs to assure that carbon dioxide removal components are compatible with the overall system for providing breathable air.

Paragraph (e)(3) would require that carbon dioxide removal components remove carbon dioxide at a rate of 1.08 cubic feet per hour per miner. MSHA is assuming that breathing rates for miners who have reached refuge alternatives would reflect activity levels of 4/5 at rest and 1/5 moderate activity. Therefore, using the respiratory quotient, which is the ratio of CO_2 expelled to O_2 consumed, the average carbon dioxide generation is 1.08 cubic feet per hour per person. These breathing rates were based upon the Foster Miller report.

Paragraph (e)(4) would require that carbon dioxide removal components be contained to prevent contact with the chemicals and the release of airborne particles. Commonly used CO_2 removal systems include lithium hydroxide or soda lime curtains or soda lime cartridges. These systems will require proper handling and may involve using personal protective equipment. The NIOSH report stated that the scrubbing material must not become airborne or otherwise cause respiratory distress or other acute reaction.

Paragraph (e)(5) would require that carbon dioxide removal components be provided and packaged with all necessary means to expedite use. Depending on the type of CO_2 removal component, items such as hangers, racks, and clips may be required to activate and use this component.

Paragraph (e)(6) would require that carbon dioxide removal components be stored in containers that are conspicuously marked with instructions for disposal of used chemicals. Manufacturers would need to provide instructions for disposal of used chemicals.

Paragraph (f) would require the carbon dioxide removal component be tested and evaluated to demonstrate that it can maintain average carbon dioxide concentration at 1.0 percent or less, with excursions not to exceed 2.5 percent under the following conditions: (1) at 55 °F (±4 °F), 1 atmosphere (±0.5 percent), and 50 percent (±0.5 percent) relative humidity; (2) at 55 °F (±4 °F), 1 atmosphere (±0.5 percent), and 100 percent (±0.5 percent) relative humidity; (3) at 90° F (±4 °F), 1 atmosphere (±0.5 percent), and 50 percent (±0.5 percent) relative humidity; (4) at 82 °F (±4 °F), 1 atmosphere (±0.5 percent), and 100 percent (±0.5 percent) relative humidity.

The Agency is proposing testing and evaluating of the CO_2 removal component to assure that the concentration not exceed a 1.0 percent time-weighted average over the rated duration of the refuge alternative with excursions not to exceed 2.5 percent. The provisions in proposed paragraph (f) are consistent with NIOSH's recommendation.

MSHA recognizes that some CO_2 scrubbing components may not perform as well as others and that the most commonly used CO_2 scrubbing chemicals performed their function within an acceptable range of the conditions found in underground mines. The testing procedure that would be required under proposed paragraphs (f)(1) through (4) are representative of extreme conditions that CO_2 scrubbing components may be exposed to in different underground mines. The increased temperature and humidity ranges between these provisions reflect increases that would result from occupancy of a refuge alternative, although MSHA assumes that some body heat and moisture generation will be dissipated by contact with the refuge alternative or mine roof, ribs, and floor.

Therefore, it is important to evaluate these CO_2 scrubbing components and determine the differences in levels of effectiveness with currently available components. This will enable mine operators to make more informed choices in selecting scrubbing components to be used in their particular mining operation.

Paragraph (g) would require that respirators or breathing apparatus used with a breathable air component (1) be NIOSH-approved with a means of flow and pressure regulation; (2) be equipped with fittings that connect only to a breathable air compressed line; (3) allow for communication, and the provision of food, and water while preventing the entry of any outside atmosphere; and (4) be capable of being worn for up to 96 hours. The proposed rule addresses the need to have provisions to assure the safe use of respirators or breathing apparatus.

Paragraph (g)(1) would require that respirators or breathing apparatus used for a breathable air component have a NIOSH approval with a means of flow and pressure regulation.

Paragraph (g)(2) would require that respirators or breathing apparatus be equipped with fittings that connect only to a breathable air compressed line. This provision would prevent respirators from being connected to piping that is not designed for breathing apparatus or to gas sources that are not capable of sustaining life. Compressed air regulating valves and supply hoses are generally shipped with quick-connect industrial interchange safety fittings/couplings that prevent accidental separation of the hoses. The proposed rule would require that these fittings be

incompatible with outlets for non-respirable air or other gas systems so that asphyxiating substances are not introduced into breathing air lines. This provision is also comparable to the Occupational Safety and Health Administration respiratory protection standard 29 CFR 1910.134(i)(8), which states that—

[t]he employer shall ensure that breathing air couplings are incompatible with outlets for nonrespirable worksite air or other gas systems. No asphyxiating substance shall be introduced into breathing air lines.

Paragraph (g)(3) would require that respirators or breathing apparatus used with breathable air components allow for communication, and the provision of food and water while at the same time preventing the entry of any outside atmosphere. MSHA is proposing this requirement because communications with and between persons in refuge alternatives to convey and share information are vital to mine rescue efforts. The knowledge of where persons are in refuge alternatives, their condition and the conditions in the mine may make the difference between life and death in a post-accident crisis. In addition, being able to consume food and water is critical for the 96-hour confinement. MSHA believes that the proposed requirements could be met with full-faced respirators or breathing apparatus that have ports for the use of liquids, such as those used by commercial divers.

Paragraph (g)(4) would require that respirators or breathing apparatus used with breathable air components be capable of being worn for up to 96 hours. The refuge alternative standard would require that breathable air be provided in the refuge alternative at all times. Among the concerns addressed by this provision are that if respirators or apparatus are required to be worn for extended periods of time, the respirators or breathing apparatus would need to be of such a type or configuration that it would not become dislodged when sleeping or when activities are performed.

Paragraph (h) would require that an applicant prepare and submit a risk analysis to assure that the breathable air component will not cause an ignition. The proposed provision requires that an analysis be conducted to evaluate the potential fire and ignition risks of the equipment and components.

Paragraph (h)(1) would require that the risk analysis specifically address oxygen fire hazards and fire hazards from chemicals used for removal of carbon dioxide. This provision addresses MSHA's specific concern that the use of oxygen presents inherent potential fire hazards. The provision also focuses on assuring that fire hazards from chemicals used for removal of carbon dioxide are addressed by manufacturers of refuge alternative components.

Paragraph (h)(2) would require that the risk analysis identify the means used to prevent any ignition source. This provision addresses the need to assure that refuge alternative manufacturers analyze inherent potential fire hazards and, if any potential exists, that the mitigation plan includes the means to prevent ignition of breathable air component equipment or materials.

Paragraph (i) would require that the breathable air component shall include a fire extinguisher that (1) is compatible with the chemicals used for removal of carbon dioxide; and (2) uses a non-toxic extinguishing agent that does not produce a hazardous by-product when heated or activated. This paragraph addresses the need to assure that refuge alternative manufacturers analyze inherent potential fire hazards and develop means to prevent the ignition of breathable air component equipment or materials. The proposed requirements in paragraphs (h)(1) and (2) would help assure that the fire extinguisher used in a refuge alternative or component does not contribute to a secondary fire or explosion. The provisions would assist MSHA in determining that materials used in the fire extinguisher are safe for use in an underground mine and do not give off harmful gases when exposed to heat.

Section 7.507 Air-Monitoring Components

Proposed § 7.507(a) would include requirements for an air-monitoring component that provides persons inside the refuge alternative with the ability to determine the concentrations of carbon dioxide, carbon monoxide, oxygen, and methane, inside and outside the structure, including the airlock. This proposal would assure that breathable air is properly monitored and that air-monitoring equipment is properly inspected, tested, maintained, and stored so that it is fully charged and available for immediate use.

The monitoring of these gases is critical to the survival of miners occupying a refuge alternative. The proposal includes the recommended values provided in the NIOSH report for oxygen, carbon monoxide, and carbon dioxide. NIOSH recommended values and gas concentration ranges that would assure that the quality of breathable air is maintained. The ability to monitor the atmosphere outside the refuge alternative would assist miners inside the refuge alternative in making crucial decisions in the event of a mine emergency. Additionally, methane would be monitored to negate the possibility of oxygen deficiency or the potential for explosion.

Paragraph (b) would require that refuge alternatives designed for use in mines with a history of harmful gases, other than carbon monoxide, carbon dioxide, and methane be equipped to measure those harmful gas concentrations. Some mines have a history of liberating harmful gases such as hydrogen sulfide, volatile hydrocarbons, or sulfur dioxide. Miners would need to be prepared for potential liberating of these harmful gases and have appropriate monitoring equipment readily available.

Paragraph (c) would require that the air-monitoring component be inspected or tested and the test results are included in the application. This provision will assure that all types of monitors or detectors that are included in the refuge alternative will be tested for the conditions for which they are intended. Performance testing will assure the components will operate for which the air monitoring is intended as well as meet the intrinsic safety requirements. Additionally, visual inspection, calibration, and performance test reports will need to be included in the application to verify performance.

Paragraph (d) would require that all air-monitoring components be approved as permissible by MSHA and the MSHA approval number be specified in the application. MSHA will only accept MSHA approved permissible components to assure an explosion hazard does not exist in an explosive atmosphere and the components will serve the purpose for which they are intended. MSHA would allow third party testing of the components for air monitoring. Approval information will assure the components are performance-tested for safe usage in the refuge alternative.

Paragraph (e) would require that air-monitoring components meet the following: (1) The total measurement error, including the cross-sensitivity to other gases, shall not exceed ±10 percent of the reading, except as specified in the approval, and (2) the measurement error limits not exceed after startup, after 8 hours of continuous operation, after 96 hours of storage, and after exposure to atmospheres with a carbon monoxide concentration of 999 ppm (full scale), a carbon dioxide concentration of 3 percent, and full-scale concentrations of other gases.

Paragraph (e)(1) would assure that the instruments are tested to specific ranges. MSHA has referenced gas analyzer specifications from 30 CFR part 7 Diesel Engine approvals detailed in § 7.86(b)(10), which specifies that the gas analyzer error including cross-sensitivity to other gases is 5%. MSHA recommends using gas analyzers that account for cross sensitivity, such as sensitivity to hydrogen or hydrocarbons which would result in false indication of actual carbon monoxide, and adjust readings accordingly.

The ±5% error specification in § 7.86(b)(10) refers to the instrument error specification. The ±10% total measurement error specification above refers to the combined effects of environment and accessories on the measurement itself under normal conditions, and was arrived at through uncertainty evaluation of gas measurement instruments used at MSHA's Approval and Certification Center. Measurements taken when environmental conditions are not within the instruments' specified acceptable limits, or when the instrument is in need of calibration, can result in the measurement value falling outside the ±10% limit. Measurements that fall outside of the ±10% limit are not in compliance. The applicant needs to determine what environmental or calibration issues exist and resolve them to keep the combined instrument and measurement error within ±10%.

Paragraph (e)(2) would require testing to demonstrate that the gas monitors or detectors will afford miners the capability to determine accurate gas concentrations throughout the duration of refuge occupancy and at different parameters such as startup, after 8 hours of continuous operation, during storage when continuously exposed to the maximum recommended gas concentrations, and at other concentrations much higher than the recommended maximum values. This requirement takes into account the effects high gas concentration levels may have on these measurements over extended periods of time. A consensus standard for instruments, ANSI/ISA–92.02.01, Part I–1998 Performance Requirements for Carbon Monoxide Detection Instruments (50–1000 ppm full scale), specifies carbon monoxide instrument range limits of 1000 ppm, 2000 ppm overload, and the standard specifies these instruments be able to withstand a carbon monoxide shock loading of 4000 ppm.

Paragraph (e)(3) would require that calibration gas values be traceable to the National Institute for Standards and Testing (NIST) ''Standard Reference Materials'' (SRMs). This procedure will assure proper calibration of the air-monitoring equipment. These standards are recognized and accepted by industry. This provision is based upon existing § 7.86(b)(16), which references NIST SRMs.

Paragraph (e)(4) would require that the analytical accuracy of the calibration gas values be within 2.0 percent of NIST gas standards. This provision is based upon existing § 7.86(b)(16), which also references analytical accuracy of calibration gases within 2 percent of NIST gas standards.

Paragraph (e)(5) would require that the analytical accuracy of the span gas values be within 2.0 percent of NIST gas standards. This provision is based upon existing § 7.86(b)(17) which also references analytical accuracy of span gases within 2 percent of NIST gas standards.

Paragraph (e)(6) would require the detectors be capable of being kept fully charged and ready for immediate use. MSHA needs to assure that the detectors are reliable and ready to use for maintaining persons as necessary over the 96-hour period.

Section 7.508 Harmful Gas Removal Components

This section addresses removing harmful gases to assure that breathable air is maintained for persons occupying refuge alternatives during the 96-hour period.

Paragraph (a)(1) would require purging or other effective methods be provided for the airlock to dilute the carbon monoxide concentration to 25 ppm or less and the methane concentration to 1.5 percent or less as persons enter, within 20 minutes of miners activating the refuge alternative. The NIOSH recommended value of maximum concentration of carbon monoxide is 25 ppm. This provision is intended to address evacuating contaminated air by forcing the contaminated air out of the refuge alternative environment. Airlocks are intended to speed up the process of ingress and egress, because this is a smaller volume as compared to the interior space to purge. MSHA believes that following the miners' attempt to escape and time required for constructing and activating the refuge alternative, the SCSRs would allow 20 minutes for purging the airlock to establish a breathable air atmosphere.

In addition, purge air should be provided from compressed air cylinders. The allowable carbon monoxide contamination level is the NIOSH recommended value contained in the NIOSH report. The methane concentration action level in 30 CFR 75.323(b)(2)(i) of less than 1.5 percent is the limit established for persons to be allowed to occupy an area.

Paragraph (a)(2) would require that chemical scrubbing or other effective methods be provided to maintain the average carbon dioxide concentration in the occupied structure at 1.0 percent or less with excursions not to exceed 2.5 percent. The provision addresses the harmful effects of carbon dioxide, a natural asphyxiant produced through human respiration. To prevent the accumulation of harmful concentrations of carbon dioxide, scrubbing systems have been developed to chemically absorb the carbon dioxide. Carbon dioxide scrubbing systems are described as active or passive. Passive systems rely solely on natural air currents for the air to react with the chemical bed. Passive systems chemicals are usually packaged in curtains that are suspended in the refuge chamber environment. Active systems were designed to increase efficiency of CO_2 scrubbing systems. This is accomplished by forcing the air through the chemical bed by fans or compressed air. The recommended average carbon dioxide concentration came from the NIOSH report.

Paragraph (b)(1) would require that chemicals used in harmful gas removal be contained such that when stored or used they cannot come in contact with persons. Because these harmful gas removal chemicals are caustic, they would need to be contained. One way of packaging these chemicals is in curtains or cartridges that are isolated so that contact with or exposure to the chemicals is prevented. MSHA does not condone the use of uncontained materials because of the caustic nature of these materials. Chemicals must be activated without compromising the packaging materials and exposing miners to chemical hazards.

Paragraph (b)(2) would require that each chemical used for removal of harmful gas be provided together with all materials, parts, or equipment necessary for its use. This requirement is proposed to expedite activation of the scrubbing system to reduce start-up time and make the system easy to use for the miner. The intent is to make the system as uncomplicated as possible, and to reduce harmful gases as soon as possible while ensuring everything necessary is provided. The harmful gas removal system should be designed on a per-miner incremental basis to make the system easily understood by miners.

Paragraph (b)(3) would require that each chemical used for removal of harmful gas be stored in an approved

container that is conspicuously marked with the manufacturer's instructions for disposal of used chemicals. The intent of this provision is to provide for appropriate containment during shipping and pre-activation storage. Approved containers would be considered those appropriate for pre-activation transport and storage in the mine environment as determined by generally accepted chemical industry practice. Disposal instructions are also to be provided to assure miners are not exposed or otherwise injured while handling chemicals. Activation instructions should also be provided on the container.

Paragraph (c) would require that each harmful gas removal component be inspected or tested to determine its ability to remove harmful gases. The functionality and efficiency of the gas removal components need to be verified.

Paragraph (c)(1) would require that the component be tested in a refuge alternative structure that is representative of the configuration and maximum volume from which the component is designed to remove harmful gases. The intent is to obtain data that is directly representative of how the components will perform in actual use. Data from small-scale tests or prototype testing would require interpretation along with making assumptions which introduces the potential for the measured performance not being representative of full-scale performance.

Paragraph (c)(1)(i) would require that the test include three sampling points located vertically along the centerlines of the length and width of the structure and equally spaced over the horizontal centerline of the height of the structure. There are to be a total of three sampling points equally spaced along the center length of the structure on the longitudinal (horizontal) centerline and located so as to provide an accurate representation of the gas concentration found in the middle of the structure as opposed to the ends, corners, top, sides, or bottom.

Paragraph (c)(1)(ii) would require that the structure be sealed airtight. The structure is to be airtight to prevent unintended atmosphere contaminants from entering into the structure and altering/interfering with the internal test atmosphere.

Paragraph (c)(1)(iii) would require that the operating gas sampling instruments be placed inside the structure and continuously exposed to the test atmosphere.

Paragraph (c)(1)(iv) would require that the sampling instruments simultaneously measure the gas concentrations at the three sampling points. Gas sampling instruments must operate continuously at the three sampling points while measuring the gaseous concentration inside of the structure. The intent of simultaneously sampling is to determine the interior atmosphere at different locations at a given point in time, to eliminate any sampling variability introduced by sequential sampling, and to determine if a homogenous atmosphere is maintained throughout the refuge alternative.

Paragraph (c)(2) would require when testing the component's ability to remove carbon monoxide, the structure be filled with a test gas of either purified synthetic air or purified nitrogen that contains 400 ppm carbon monoxide. Refuge alternatives should be configured to ensure the air contained therein is normally isolated from the mine atmosphere which would negate the need to purge a refuge after an event. However, the concept of an airlock to provide a transition area into a breathable air zone, by its very nature, would possibly become contaminated after an event. In recognizing this, airlocks need the capability to remove contaminants or otherwise operated to ensure that contaminated mine atmosphere is prevented from migrating through the airlock into the breathable air refuge. The 400 ppm was selected based on safety considerations (ACGIH 400 ppm CO STEL limit) while also being able to determine multiple gas concentration level reductions of the gas purification/de-contamination system for the entire ingress/egress process at maximum occupancy.

Paragraph (c)(2)(i) would require that after a stable concentration of 400 ppm, ±5 percent, carbon monoxide has been obtained for 5 minutes at all three sampling points, a timer be started and the structure shall be purged or CO otherwise removed. A uniform homogeneous atmosphere inside of the chamber containing a concentration of 400 ppm must be consistent for 5 minutes. After this is achieved, a timer will be started and the structure purged or CO otherwise removed to an acceptable concentration.

Paragraph (c)(2)(ii) would require that carbon monoxide concentration readings from each of the three sampling devices be recorded every 2 minutes. The intent is to have enough data points to have a valid test.

Paragraph (c)(2)(iii) would require that the time from the start of harmful gas removal until the readings of the three sampling instruments all indicate a carbon monoxide concentration of 25 ppm or less shall be recorded. The purpose for recording the time is to assure the time to remove the toxic gas and activate the refuge alternative is less than the time to deplete the life of the SCSR. All of the rated number of occupants need to be located safely inside the refuge alternative prior to depleting their SCSR air capacity.

Paragraph (d) would allow that alternate performance tests may be conducted if the tests provide the same level of assurance of the harmful gas removal component's capability as the tests specified in paragraph (c) of this section. Alternate tests shall be specified in the approval application. The intent of this statement is as a general protection clause. The applicant can perform other tests to assure the ability of these systems to remove harmful gases if the applicant can demonstrate that the same degree of protection is provided as the refuge alternative requirements. Alternate tests may be used if they are submitted to MSHA for approval and there is assurance that the capacity to remove harmful gas is adequate.

Section 7.509 Approval Markings

Paragraph (a) would require that each approved refuge alternative or component be identified by a legible, permanent approval marking that is securely and conspicuously attached to the component or its container. This requirement is necessary to assure that only approved materials and components are used in the refuge alternatives. The marking would be placed such that the marking will not be subject to damage or removal.

Paragraph (b) would require that each approval marking include the refuge alternative's and component's MSHA approval number and expiration date. This requirement is necessary to assure that only approved materials and components are used in the refuge alternatives.

Paragraph (c) would require that each refuge alternative structure provide a conspicuous means for indicating an out-of-service status, including the reason it is out of service. This requirement would assure the materials are able to be inspected and removed and replaced when needed.

Paragraph (d) would require that each airlock be conspicuously marked with the recommended maximum number of persons that can use it at one time. This requirement would assure the airlock is used as intended to allow safe passage of persons through the airlock and to prevent the contamination of the interior space atmosphere.

Section 7.510 New Technology

This proposed section would allow MSHA to approve a refuge alternative or a component that incorporates new knowledge or technology, if the applicant demonstrates that the refuge alternative or component provides no less protection than those meeting the requirements of this subpart. Recent innovative uses of commercially available technology to enhance mine safety have shown that, while the drawbacks are significant, credible scientific research supports the use of refuge alternatives. Refuge alternatives are technologically feasible in that they use commercially available technology and they can reasonably be integrated into mining operations considering specific physical characteristics of a mine. MSHA recognizes that using the refuge alternatives in low coal mines could be problematic. The Agency further recognizes that certain types of refuge alternatives may not be feasible in low coal mines. MSHA solicits comment from the public on the use of refuge alternatives in low coal mines. Please be specific in your response, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and data to support your comment.

B. Part 75 Safety Standards

Section 75.221 Roof Control Plan Information

Paragraph § 75.221(a)(12) would require that the operator describe the roof and rib support necessary for the refuge alternative in the roof control plan. Roof and rib falls could damage a refuge alternative and compromise its integrity. Humidity resulting from fires, vibrations, shock, and thermal effects are often associated with catastrophic events that may require the use of additional roof support for areas housing refuge alternatives. Due to the vital role of refuge alternatives in the event of an emergency, mine operators must plan for their location and assure that they are adequately protected from possible roof and rib falls. MSHA encourages the mine operator to prepare locations for refuge alternatives in advance. The additional steps to protect these units from roof and rib falls must be described in the roof control plan.

Section 75.313 Main Mine Fan Stoppage With Persons Underground

Paragraph 75.313(f) would require the use of intrinsically safe electrical components in a refuge alternative during fan stoppages underground. Mine explosions, mine fires, and coal bumps and bounces may compromise the mine ventilation system resulting in a mine fan stoppage. A refuge alternative that is normally located in intake air may be exposed to a potentially explosive mixture of methane in the aftermath of a mine emergency. Like existing § 75.313(e), only intrinsically safe electrical components may be operated in a refuge alternative during fan stoppages.

Section 75.360 Preshift Examination

Paragraph 75.360(d) would require the person conducting the preshift examination to check the refuge alternative for damage, the integrity of the tamper-evident seal and the mechanisms required to activate the refuge alternative, and the ready availability of compressed oxygen and air. Refuge alternatives may be damaged by persons, mining equipment, or the mine environment. Compressed gas storage systems may leak. Due to the critical nature of refuge alternatives, each refuge alternative must be examined as part of the preshift examination. Visible damage to the refuge alternative and damage to the tamper-evident seal would be checked during the preshift examination. The preshift examination would reveal loss of compressed gas pressures, electrical charge, or communications system.

MSHA requests specific comments on the visual damage that would be revealed during the preshift examinations. The Agency is concerned with the feasibility and practicality of visually checking the status of refuge alternatives without having to enter the structure or break the tamper-evident seal. Please be specific in your response, regarding methods or alternatives, rationale, safety benefits to miners, technological and economic feasibility, and data to support your comment.

Section 75.372 Mine Ventilation Map

Paragraph § 75.372(b)(11) would require that each refuge alternative be shown on the mine ventilation map. Showing the location of the refuge alternatives in relationship to the mine ventilation system facilitates an evaluation of the effectiveness of a potential refuge alternative location. The location of the refuge alternative in relationship to potential hazards such as seals and oil and gas wells will be evaluated during the ventilation map review. The mine ventilation map is often referenced during mine rescue efforts. Plotting refuge alternatives on the ventilation map could aid decisions during rescue operations.

Section 75.1200 Mine Map

Paragraph § 75.1200(g) would require that the mine map show the locations of refuge alternatives. The existing § 75.1200 mine map forms the basis for decisions made during mine rescue efforts. Plotting refuge alternatives on the mine map allows the mine rescue planners to consider where miners may be sheltered after a mine emergency. This information will be critical to mine rescue efforts in locating trapped personnel.

Section 75.1202–1 Temporary Notations, Revisions, and Supplements

Paragraph § 75.1202–1(b)(4) would require that refuge alternatives that are moved be shown on the mine map with temporary notations. During an emergency, mine maps form the basis for mine rescue efforts. Locations of refuge alternatives are critical to decisions made in rescue efforts and must be kept current on the mine map.

Section 75.1500 Emergency Shelters

MSHA proposes to remove and reserve this section and delete the existing language of § 75.1500. This section would be replaced with specific requirements for refuge alternatives in existing §§ 75.1501, 75.1502, 75.1504, and 75.1505 and new §§ 75.1506, 75.1507, and 75.1508.

Section 75.1501 Emergency Evacuations

Paragraph § 75.1501(a)(1) would require that the responsible person know the locations of refuge alternatives. Under the proposal, the designated responsible person must have current knowledge of the locations, types, and capacities of refuge alternatives to make informed mine evacuation decisions in the event of an emergency.

Section 75.1502 Mine Emergency Evacuation and Firefighting Program of Instruction

Paragraph § 75.1502(c)(3) would be a new provision and require that instruction in the activation and use of refuge alternatives be added to the mine emergency evacuation program of instruction. This proposal would assure that miners are able to effectively activate and use refuge alternatives in case of an emergency. Existing § 75.1502(c)(3) would be redesignated as paragraph (c)(4). Paragraph (c)(4)(vi) would be new and require that the program of instruction include a scenario for using refuge alternatives. Although MSHA expects that miners would occupy refuge alternatives only if no other options are available, they need

to be aware of the circumstances that may require this difficult decision.

Existing § 75.1502(c)(7) would be redesignated as paragraph (c)(8) and would require that the program of instruction include the locations of refuge alternatives. The locations of refuge alternatives may be critical for miners who are involved in mine emergencies.

Paragraph § 75.1502(c)(10) would be new and require a summary of the procedures related to constructing and activating refuge alternatives. This summary information would be necessary for miners during training. The summary would assure that all critical steps of constructing and activating the refuge alternative are reviewed in training.

Paragraph § 75.1502(c)(11) would be new and require a summary of the procedures related to refuge alternative use. This summary information would be necessary for the miners to review during training. The summary would assure that all critical steps of using the refuge alternative are reviewed in training.

Section 75.1504 Mine Emergency Evacuation Training and Drills

The best refuge technology, equipment and emergency supplies are of little benefit if they are misused or not used at all. In its report, NIOSH stated that—

> The potential of refuge alternatives to save lives will only be realized to the extent that mine operators develop comprehensive escape and rescue plans, which incorporate refuge alternatives.

Emergencies can result in miner disorientation and panic. Using sound judgment in a given emergency can be critical for survival. MSHA and NIOSH have found that training is necessary to instill the discipline, confidence, and skills necessary to survive a mine emergency. This proposal would improve miner training and help assure that underground coal miners know when to use a refuge alternative and know how to use the various components to sustain life until rescued. During each quarterly drill, miners would be required to locate the refuge alternatives and review the activation and use of the refuge alternative for the area where the miners normally work and travel during each quarterly drill. Refuge alternatives expectations training would emphasize that miners first try to evacuate the mine and that refuge alternatives are a haven of last resort when escape is impossible.

MSHA has identified problems related to skill degradation in emergency evacuations of mines. In a series of studies from 1990 through 1993, the U.S. Bureau of Mines, University of Kentucky, and MSHA researchers measured skills degradation. In one study, the proficiency rates dropped about 80 percent in follow-up evaluations conducted about 90 days after training. MSHA recognizes that with any non-routine task, such as constructing, activating, and using a refuge alternative, knowledge and skill diminish rapidly. In another study [4] researchers concluded that ''companies should adopt a hands-on training protocol.'' The proposed rule reflects MSHA's conviction that frequent and effective refuge alternative training would be necessary to assure miner proficiency.

Proposed § 75.1504(b)(3)(ii) and (4)(ii) would require that in quarterly training and drills, miners locate refuge alternatives. This knowledge would be critical to miners in a mine emergency.

Paragraph § 75.1504(b)(6) would require a review of the checklist for constructing and activating the refuge alternatives and components. MSHA proposes that quarterly training and drills includes this training as recognition that with any non-routine task, such as activating and using a refuge alternative, knowledge and skill diminish rapidly.

Miners need to be aware of how to construct and activate a refuge alternative safely. The information in the proposed checklist would be used in the training and should include all of the step-by-step procedures easily understood by the miners to perform these tasks. For easy availability, mine operators should consider laminated cards or other equally durable forms of the checklist for use by miners.

Paragraph § 75.1504(b)(7) would require a review of the procedures related to use of refuge alternatives and components. Miners need to be aware of how to use a refuge alternative safely in the event of an emergency. MSHA recognizes that manufacturers generally provide information on the safe use of their products. This information would be used in training and should include the step-by-step procedures necessary to use refuge alternatives and should be easily understood by the miners. This information will be critical for miners who need to spend a sustained period in a refuge alternative.

MSHA's Office of Educational Policy and Development will assist mine operators with job task analysis and training materials such as videos to improve the quality and effectiveness of programs of instruction. NIOSH is developing a refuge alternative training program that is expected to be available by the end of 2008. MSHA plans to include a delayed effective date in the final rule to allow mine operators to develop Emergency Response Plans and training plans and submit them to MSHA.

Proposed § 75.1504(c)(3) would require annual expectations training in construction, where applicable, activation, and use of refuge alternatives and components. Under the existing standard, each miner must participate in expectations training over the course of each year. This training includes donning and transferring self-contained self-rescuers (SCSRs) in smoke, simulated smoke, or an equivalent environment. The training also requires breathing through a realistic SCSR training unit that provides the sensation of SCSR airflow resistance and heat.

Under the proposal, miners would have to be trained in construction, where applicable, activation, and use of refuge alternatives similar to those in use at the mine, including activation and operation of component systems; and instruction on when to use refuge alternatives during a mine emergency. Refuge alternatives expectations training would emphasize that miners first try to evacuate the mine and that refuge alternatives are a haven of last resort when escape is impossible. The proposed expectations training would require an annual realistic experience of constructing where applicable, activating, and using a refuge alternative in a simulated emergency situation. The proposed refuge alternative expectations training could be combined with the existing expectations training.

Expectations training will be essential to reduce the level of panic and anxiety associated with the use of refuge alternatives. NIOSH supports expectations training to reduce the level of panic and anxiety associated with the use of refuge alternatives.[5]

Properly constructing and activating a refuge alternative can be a relatively complex procedure that must be done correctly to establish a breathable air environment in a smoke-filled mine. The operation of most refuge alternatives requires periodic monitoring and adjustments to the gases to assure a breathable atmosphere. Failure to correctly perform these tasks may imperil the lives of miners within the refuge alternative. MSHA envisions the use of a modified version of the

[4] The U.S. Bureau of Mines (Vaught *et al.*, 1993).

[5] NIOSH, Research Report on Refuge Alternatives for Underground Coal Mines (2007), p. 14.

refuge alternative in the mine for this training purpose.

The miners would have to construct the refuge alternative, if applicable, activate the refuge alternative, purge the atmosphere, and turn on the breathable air and maintain a viable atmosphere. Although MSHA does not specify a minimum time for this annual training exercise, the duration should be sufficient to allow miners to perform all of the necessary tasks and give them a realistic experience of using the refuge alternative. The Agency would require that this training expose the miners to the expected heat and humidity conditions in the refuge alternative. MSHA does not expect that this training would include the actual use of oxygen and harmful gas removal components; these actions may be performed with compressed air and simulated removal components. The training must also emphasize that, in the event of an emergency, miners should first try to evacuate the mine and that refuge alternatives are the option of last resort when escape is impossible.

MSHA solicits comment from the public on the Agency's proposed approach to expectations training. The Agency is interested in comment on its proposed strategy and the proposed elements of training. Please be specific in your response, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and data to support your comment.

Proposed § 75.1504(c)(4), redesignated from existing § 75.1504(c)(3), would require that a miner participate in expectations training within one quarter of being employed at the mine. MSHA would expect that any new miner would be given the expectations training within this timeframe. This could be accomplished during new miner or newly employed miner training.

Section 75.1505 Escapeway Maps

Proposed § 75.1505(a)(3) would require that the escapeway map be posted or readily accessible at each refuge alternative. The location of refuge alternatives relative to the escapeway may be vital to the survival of miners during mine emergencies. Escapeway maps form the basis for decisions made during mine evacuation. Having escapeway maps on hand for miners would facilitate important decisionmaking.

Proposed § 75.1505(b) would require that escapeway maps include the locations of refuge alternatives, and that any change be shown on the map. Escapeway maps form the basis for mine rescue efforts. Locations of refuge alternatives are critical to decisions made during rescue efforts and must be kept current on the escapeway map.

Section 75.1506 Refuge Alternatives

This section would require that mine operators provide refuge alternatives to accommodate all persons working underground and specify criteria for the use and maintenance of refuge alternatives. MSHA believes that refuge alternatives will provide a refuge of last resort for miners unable to evacuate the mine during an emergency. By providing the essential elements of survival (breathable air, water, food, communications, etc.) the likelihood of miners surviving an inhospitable post-emergency environment would be increased. MSHA realizes that a flexible approach to providing refuge alternatives is necessary due to the wide range of mining conditions (seam height, pitch, mining method, and mine layout) that exist in underground coal mines. To address these widely-varying conditions, MSHA has taken a performance-based approach to refuge alternatives. For example, the refuge alternative has to provide for essential needs of occupants, but the proposal does not require specific methods, equipment, or devices.

Paragraph (a) would require each operator to provide refuge alternatives with sufficient capacity to accommodate all persons working underground. MSHA believes that escape to the surface is more protective than using a refuge alternative. However, when escape is impossible, a refuge alternative must be available for all persons underground. MSHA recognizes that the highest concentration of miners is near a working section. Toward this end, refuge alternatives would need to be located to accommodate the miners at or near a working section. Refuge alternatives would also be required for miners working in outby locations. The proposed rule would not require refuge alternatives for miners who can reach a surface escape facility within 30 minutes. Under the proposal, mines in which all miners would be within 30 minutes of the surface or a surface escape facility would not have to have a refuge alternative.

Paragraph (a)(1) would require at least 15 square feet of usable floor space and at least 60 cubic feet of usable volume per person. This proposed requirement of interior floor space and volume is necessary to provide adequate room for miners during any period of time confined in the refuge alternative. MSHA is interested in practical floor space and volume requirements for mining operations. The proposed requirements are intended to mean that the miner would have this space available to them without being affected by any other factors, e.g., stored items. MSHA intends that space requirements would not include airlock space. The NIOSH report recommended key design values of 15 square feet of floor space and 85 cubic feet volume per miner. However, in its report, NIOSH stated that these recommendations were not to be considered absolute. MSHA recognizes that achieving the volume per miner in refuge alternatives for low coal mines could be problematic.

To lie down, miners would require a certain length and width. For example, 15 square feet would be provided by a space 6 feet long and 2.5 feet wide. This space would have to be 4 feet high, which would give each miner 60 cubic feet of volume. These dimensions would serve as a minimum for the miner during the periods of confinement. In lower mining heights, the 60 cubic feet of volume may need to be gained by increasing the floor space. For example, 60 cubic feet of volume in a refuge alternative 2.5 feet high would require 24 square feet of floor space, which could be provided by a space 6 feet long and 4 feet wide.

MSHA solicits comment from the public on these proposed values for floor space and volume, particularly in low mining heights. Please be specific in your response, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and data to support your comment.

Miners would need to have additional space to perform duties such as attending to the harmful gas removal components, performing gas tests or attending to basic needs—drinking, eating, and using the sanitation facilities—and providing for injured miners. Curtains suspended as part of a passive system to remove carbon dioxide should be considered when determining volume.

Another important factor in the volume design is the need to control the apparent temperature in the interior space of the refuge alternative. Larger volumes are more effective at dissipating heat because of increased surface area.

Paragraph (a)(2) would require that refuge alternatives for working sections accommodate the maximum number of persons that can be expected on or near the section at any time. The refuge alternatives for the working sections would need to include space to accommodate all persons working near the section. It should accommodate all miners that join those working at the section during a shift change. For example if a mine has a practice of ''hot

seat'' change-out of crews at the face, the refuge alternative would need to accommodate both crews; any other persons who would routinely work near the section, such as managers, surveyors, vendors, and state and Federal inspectors. Mines that have just begun development in which the working section is within 30 minutes travel time (walking or crawling) from a portal or surface escape facility would not be required to have a refuge alternative.

Paragraph (a)(3) would require that refuge alternatives for outby areas accommodate persons assigned to work in the outby area. The proposed rule would not require that outby refuge alternatives be able to accommodate all persons working inby its location. Refuge alternatives are used to shelter in-place only when evacuation is not feasible. Under the proposal, outby refuge alternatives would have to accommodate supply persons, locomotive operators, examiners, state and Federal inspectors, pumpers, maintenance persons, belt persons, and other persons who may be working in the outby areas. A refuge alternative must be sufficient to maintain the miners who can reasonably be expected to use it.

MSHA solicits comment from the public on the Agency's proposed approach to refuge alternative capacity. Please be specific in your response, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and data to support your comment.

Paragraph (b) addresses proposed locations for placement of refuge alternatives. Refuge alternatives would have to be near locations where miners are typically stationed. MSHA's experience shows that the highest concentration of miners underground will be at the working section, therefore, a refuge alternative capable of accommodating these miners must be positioned close to the working section.

Paragraph (b)(1) would require that refuge alternatives be located between 1,000 feet and 2,000 feet from the working face and from areas where mechanized mining equipment is being installed or removed. MSHA is proposing these distances to accommodate the periodic advancement of the working section, to recognize the potential for damage from an explosion, and to limit travel time from the working section to the refuge alternative.

In its report, NIOSH recommended that the refuge alternative be located no further from the working face than the distance a miner could reasonably travel in 30 to 60 minutes under expected travel conditions. NIOSH also recommended that the refuge alternative be located at least 1,000 feet from the working face to limit damage from explosions at the working face. In its report, NIOSH recognized that establishing the exact location is problematic and indicated it would appear advantageous to place the refuge alternative as close to the face as possible to minimize the time and effort required for miners to reach it. NIOSH added that locating the refuge alternative closer to a possible explosion source will increase the chance it is damaged by overpressure or flying debris from the initial explosion. NIOSH analyzed past disasters as well as various probable scenarios. NIOSH further noted that lower seam heights, difficult bottom conditions, and the presence of smoke, among other factors, would affect travel times. NIOSH went on to say that,

> [n]onetheless, the experience of studying mine explosions at NIOSH's Lake Lynn experimental mine suggests that refuge chambers should normally be located a minimum of 1000 feet from the working face and could be as far as 2000 feet * * *.

This NIOSH reasoning is consistent with MSHA's rationale for at least 1,000 feet, which is based on explosion pressure.

West Virginia requires ''An emergency shelter/chamber shall be maintained within one thousand (1,000) feet of the nearest working face in each working section.'' Illinois requires that ''Rescue chambers must be provided and located within 3,000 feet of each working section of a mine, in accordance with a plan submitted by an operator and approved by the Mining Board.'' The proposal would require that refuge alternatives be located between 1000 feet and 2000 feet from the working face and from locations where mechanized mining equipment is being installed or removed. As an alternative to the proposed requirement that refuge alternatives be located between 1,000 feet and 2,000 feet from the working face and from areas where mechanized mining equipment is being installed or removed, MSHA is considering including the following alternative in the final rule. As an alternative to the specific requirements in the proposal for locating refuge alternatives in inby areas, MSHA is proposing to allow, depending on mine specific conditions, refuge alternatives with boreholes to be located up to 4,000 feet from the working face. MSHA solicits comments on this proposed alternative to locating refuge alternatives in inby areas. MSHA also solicits comments on the proposed requirement that refuge alternatives be located between 1,000 feet and 2,000 feet from the working face and from areas where mechanized mining equipment is being installed or removed. Please be specific in your response, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and data to support your comments.

Paragraph (b)(2) would require that refuge alternatives be spaced within one-hour travel distances in outby areas where persons work such that persons in outby areas are never more than a 30-minute travel distance from a refuge alternative or safe exit. Proposed paragraph (b)(2) further provides that the operator may request and the District Manager may approve a different location in the Emergency Response Plan (ERP). The operator's request would have to be based on an assessment of the risk to persons in outby areas, considering the following factors: Proximity to seals; proximity to potential fire or ignition sources; conditions in the outby areas; location of stored SCSRs; and proximity to the most direct, safe, and practical route to an intake escapeway. This approach is generally consistent with NIOSH's recommendations. Persons who work in outby areas may need to travel more than 30 minutes to reach a refuge alternative. They should be provided with additional SCSRs to assure that they can reach a refuge alternative from outby areas.

In 2006, MSHA examined how far miners could travel during 30 minutes for the Emergency Mine Evacuation final rule (71 FR 71430, December 8, 2006). Existing § 75.1714–4(c)(2) provides two methods for determining the 30-minute spacing of SCSR storage locations in escapeways. The first method, in existing § 75.1714–4(c)(2)(i), requires the mine operator to calculate the spacing based on a sample of typical miners walking a selected length of each escapeway. A sample of typical miners is a cross-section of the population of all miners who would have to evacuate the mine and use the SCSRs stored in the escapeways. In general, operators using this option must use a sample that includes miners of various ages, weights, levels of physical fitness, and smoking habits; and a selected portion of the escapeway that reflects entry height, slope, and underfoot conditions representative of the entire escapeway.

The second method, in existing § 75.1714–4(c)(2)(ii), requires a mine operator to use a table that specifies maximum SCSR storage location

spacing based on average entry height. This table is based on statistical data collected from the 1997 MSHA–NIOSH study.[6] The mine operator may use the SCSR storage location spacing specified in the following table, except for escapeways with uphill grades over 5 percent.

Average entry height	Maximum distance between SCSR storage locations (in feet)
<40 in. (Crawl)	2,200
>40–<50 in. (Duck Walk)	3,300
>50–<65 in. (Walk Head Bent)	4,400
>65 in. (Walk Erect)	5,700

For spacing refuge alternatives in outby areas, the mine operator may choose either of the above methods.

MSHA solicits comment from the public on the Agency's proposed approach to locating refuge alternatives in outby areas, including the minimum and maximum distances. Please be specific in your response, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and data to support your comment.

Paragraph (c) would require that roof and rib support for the refuge alternative locations be specified in the mine's roof control plan. The proposed provision addresses hazards from falling material, which may compromise the integrity of the refuge alternative. MSHA understands that no currently available refuge alternatives can withstand significant roof and rib falls. Humidity resulting from fires, vibrations, shock, and thermal effects are often associated with catastrophic events that may require the use of additional roof support for areas housing refuge alternatives.

Due to the vital need for refuge alternatives to serve their intended purpose, mine operators must assure that they are adequately protected from roof and rib falls. MSHA encourages mine operators to plan and prepare locations for refuge alternatives in advance. The necessary steps to protect refuge alternatives from roof and rib falls must be described in the roof control plan. MSHA anticipates that in a significant number of instances, operators will need to provide supplemental roof and rib support to protect the refuge alternative.

Paragraph (d) would require that the operator protect the refuge alternative and contents from damage during transportation and storage. The proposed provision is intended to assure that care will be taken to avoid damage to the refuge alternative at all times. Mine operators need to assure that miners follow all safe procedures when transporting a refuge alternative from one location to another. Attention needs to be paid to procedures such as the use of proper connections for transportation and devices such as tow bars, clevises and hitches. Refuge alternatives that have materials and components stored on transportable equipment, such as a skid, would require care to assure that they are not damaged while in storage.

Paragraph (e) would require that a refuge alternative be removed from service if examination reveals damage or tampering that could interfere with the functioning of the refuge alternative or any component. Refuge alternatives may be damaged by persons, mining equipment or the mine environment. The proposed rule would require that damage must be evaluated and any indication that it interferes with the functioning of the refuge alternative or its components would require that the refuge alternative be immediately removed from service. For example, if examination reveals a leak in a compressed gas storage system, the refuge alternative would have to be removed from service since it would be unable to provide breathable air in an emergency.

Paragraph (e)(1) would require the operator to withdraw all persons from the area serviced by the refuge alternative if the refuge alternative is removed from service, except those persons referred to in § 104(c) of the Mine Act. Under the proposal, if an inoperable or damaged refuge alternative would not provide the protection intended, all persons would have to be withdrawn from the area serviced by the refuge alternative. This would not include persons performing the repairs, who should be provided with additional SCSRs to assure that they can reach another refuge alternative.

Paragraph (e)(2) would require that refuge alternative components removed from service be replaced or be repaired in accordance with manufacturer's specifications. This proposed provision would require mine operators to maintain the refuge alternative in its approved condition by using approved components and repairing it in accordance with the manufacturer's specifications. Miners would be provided the protection afforded by approved refuge alternatives at all times.

Paragraph (f) would require that, at all times, the site and area around the refuge alternative be kept clear of machinery, materials, and obstructions that could interfere with the activation or use of the refuge alternative. Under the proposal, refuge alternative locations would be easily accessible in that the areas around them would be maintained without obstructions to hinder access to the refuge alternative or to allow the refuge alternative to expand or be constructed to create the secure space. The proposal is necessary to assure the availability and survivability of the refuge alternative and its occupants.

Paragraph (g) would require that each refuge alternative be conspicuously identified with a sign or marker. The proposal would provide a quick way for persons not using the lifeline system to easily locate the refuge alternative in an emergency.

Paragraph (g)(1) would require that a sign or marker made of reflective material with the word ''Refuge'' be posted conspicuously at each refuge alternative. Reflective material greatly increases the visibility of these signs. This requirement is the same as the existing § 75.1714–4(f), which requires reflective signs on SCSR storage locations.

Paragraph (g)(2) would require that a directional sign, made of reflective material, be posted leading to each refuge alternative location. Miners may not be located in escapeways when an emergency occurs. For these miners, a clear system of signs may be critical during an emergency. Persons traveling in adjacent entries would have signs directing them to the refuge alternative.

Section 75.1507 Emergency Response Plan; Refuge Alternatives

Proposed § 75.1507 would require mine operators to include refuge alternative provisions in their Emergency Response Plan (ERP). Section 2 of the MINER Act requires each underground coal mine operator to develop and adopt an emergency response plan.

Paragraph (a)(1) would require that the mine operator specify the types of refuge alternatives and components used in the mine. There are three types of refuge alternatives envisioned in the proposed rule. The proposed rule would provide flexibility in the type of refuge alternatives that will meet the requirements. The type of alternative is not specific to the seam heights.

One type is a pre-fabricated self-contained unit. The unit is portable and may be used in outby applications as

[6] MSHA–NIOSH study, ''The Oxygen Cost of a Mine Escape'' (Kovac, Kravitz, and Rehak, 1997).

well as near the working section. This unit has all the components built-in.

A second type is constructed in place. Typically, the components of this unit are placed in a cross-cut or dead-end entry and stoppings are built to create a secure area with an isolated atmosphere. The components, including breathable air, removal of harmful gases, and air monitoring should be approved components and placed such that they are ready to be activated when miners reach the secure area. The stoppings and doors would have to be designed to resist a 15 psi overpressure. This refuge alternative would typically be used outby. If used near the working section, the stoppings could be removed to allow the components to be moved periodically to the next location and new stoppings would have to be built. A method and materials, if needed, would be necessary to provide breathable air for the miners while this type is being moved.

A third type uses materials pre-positioned for miners to construct a secure area with an isolated atmosphere. The materials and components are portable and used to construct a secure area following an accident. The components, including breathable air, removal of harmful gases, and air monitoring should be approved components and placed such that they are ready to be activated when miners reach the secure area. MSHA envisions that mine operators using this type would have all materials and components in a protected self-contained unit ready to be activated. The proposed rule would allow for the refuge alternative materials and components to be placed at locations such that, following an accident, a secure space could be constructed with the materials and the breathable air component would be readily activated within the secure space to create an isolated atmosphere. This provision would require the operator to provide details of this refuge alternative in the ERP. This alternative would require the operator to have the materials situated in a safe location and to move them as necessary to be located near the working section as required. The provisions are necessary to assure the availability and survivability of the structure and the occupants.

As appropriate, MSHA would approve the refuge alternatives and components. The pre-fabricated self-contained unit would need to be approved under Part 7, including structural, breathable air, air monitoring, and harmful gas removal components of the unit. The structural components of units constructed in place and with materials pre-positioned would be approved by the District Manager and as appropriate, would be inspected during the enforcement process. The breathable air, air monitoring, and harmful gas removal components of these units would be approved under Part 7.

Paragraph (a)(2) would require that the ERP include procedures for maintaining the approved refuge alternatives and components. This proposal would assure that miners are able to maintain or correct any problems that may develop during storage or use of the refuge alternatives. Procedures should include maintenance checks and replacement schedules for components.

Paragraph (a)(3) would require that the rated capacity of each refuge alternative, the number of persons expected to use each refuge alternative, and the duration of breathable air provided per person by the approved breathable air component of each refuge alternative be defined in the ERP. The ERP would need to state specifically that the refuge alternatives can support a specified number of persons for a designated length of time. This information assists MSHA in evaluating whether the refuge alternative or component meets the requirements for sustaining persons for 96 hours. MSHA solicits comments from the public on the 96-hour duration. Please be specific in your response, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and data to support your comment.

Paragraph (a)(4) would require that the ERP include the method for providing breathable air and removing carbon dioxide with sufficient detail of the component's capability to provide breathable air over the duration stated in the approval. For example, the Agency recognizes that different types and combinations of equipment and methods from several manufacturers may be used to provide for breathable air and for the removal of carbon dioxide. This information assists MSHA in evaluating whether the breathable air meets the requirements for sustaining persons for 96 hours.

Paragraph (a)(5) would require that the ERP include methods to provide ready backup oxygen controls and regulators. The term ''ready'' is meant to be pre-connected valves and regulators. Redundant oxygen control valves and regulators are necessary to assure that miners will always have breathable air available in case of component failures.

Paragraph (a)(6) would require that the ERP include the methods for providing an airlock and methods for providing breathable air in the airlock. Refuge alternatives that require an airlock would be required to provide breathable air in the airlock at all times. However, when miners enter the airlock, it is necessary to monitor and provide purge air to remove any contaminants and minimize contamination inside the refuge alternative. Sufficient purge air is necessary to clear the airlock of contaminants.

Paragraph (a)(6) would require that the ERP specify that the airlock is capable of maintaining breathable air, except where adequate positive pressure is maintained. The ERP should provide specific information regarding how the airlock will provide and maintain breathable air. Purging or other effective methods would be necessary, within 20 minutes of miners activating the refuge alternative, for the airlock to dilute the carbon monoxide concentration to 25 ppm or less and the methane concentration to 1.5 percent or less as persons enter. The proposed rule includes an exception for an airlock if the refuge alternative is capable of maintaining adequate positive pressure. The positive pressure would prevent outside air from contaminating the refuge alternative. The proposal would assist MSHA in evaluating whether the airlock would function effectively.

Paragraph (a)(7) would require that the ERP include methods for providing sanitation facilities. The ERP should contain information on containing waste and eliminating objectionable odors. The ERP should also include information that the sanitation facilities are adequate for the specified number of persons and where it is to be located. The proposal would assist MSHA in determining that the refuge alternative includes an adequate means for containing waste.

Paragraph (a)(8) would require that the ERP include the methods for harmful gas removal. Sufficient purge air is necessary to clear the refuge alternative of smoke and carbon monoxide unless the design of the refuge alternative prevents the infiltration of these combustion products. Information on harmful gas removal is essential for MSHA to determine the ability of the refuge alternative to sustain occupants for 96 hours. The purpose of this component is primarily to remove carbon dioxide exhaled by the occupants. MSHA also intends that this component be capable of removing toxic and irritant gases, fumes, mists, and dusts that may enter the refuge alternative through the airlock.

Paragraph (a)(9) would require that the ERP include methods for monitoring

gas concentrations, and charging and calibrating equipment. This information is essential for MSHA to determine that persons inside the refuge alternative will be aware of the concentrations of carbon dioxide, carbon monoxide, methane, and oxygen inside and outside the structure, including the airlock. This information assists MSHA in evaluating whether the air-monitoring component meets the requirements for sustaining persons for 96 hours. Different types and combinations of instruments may be used to comprise an air-monitoring component. The proposal allows MSHA to determine that discrete components are appropriate, available, and functional for monitoring breathable air.

MSHA believes that a properly designed system would control gas concentrations inside the refuge alternative. The intent of this provision is that detectors would be used to periodically check and provide a means of increasing the miner's awareness of gas concentrations. Instruments that require fresh air for initial startup would not be appropriate to be stored for use in refuge alternatives. If the battery life of the instruments is not sufficient for 96 hours of monitoring then multiple detectors would be required.

Paragraph (a)(10) would require that the ERP include the method to provide lighting sufficient to perform tasks. Sufficient light is essential to allow persons to read instructions and warnings, as well as reading gages, operating gas monitoring detectors, and other activities related to the operation of the refuge alternatives and the needs of the occupants. Lighting that generates significant heat, or requires continual manual power for light generation, would be unacceptable for use in a refuge alternative.

Paragraph (a)(11) would require mine operators to affirmatively state in the ERP that the locations are suitable for refuge alternatives. The proposed rule would require that refuge alternatives be protected from known hazards in the coal mine. Refuge alternatives would also need to be located so that they are easily accessible. The proposed rule would require that refuge alternatives be placed at locations that do not have obstructions to future physical dimensions of the refuge alternative. The provisions are necessary to assure the availability and survivability of the structure and the occupants.

Paragraph (a)(11)(i) and (ii) would require that the ERP specify that refuge alternatives are not within direct line of sight of the working face and, where feasible, not in areas directly across from, nor closer than 500 feet radially from, belt drives, take-ups, transfer points, air compressors, explosive magazines, seals, entrances to abandoned areas, and fuel, oil, or other flammable or combustible material storage. The proposed rule addresses the potential damage from a working face explosion and, additionally, the potential of a fire at certain areas or equipment. Locating refuge alternatives away from these areas would minimize the heat or explosive forces that could occur and affect the safety of persons in the refuge alternative.

NIOSH recommended that refuge alternatives be positioned in crosscuts rather than entries, or located in dead-end cuts to decrease the possibility of damage from overpressure or flying debris from an explosion. NIOSH also recommended that refuge alternatives be located away from potential sources of fires, such as belt drives. NIOSH further recommended that, whenever practical, the refuge alternative should not be located in nor off of track entries nor within approximately 1,000 feet of any mine seal.

This proposal includes locations for refuge alternatives that are consistent with NIOSH's recommendations. The Agency would consider exceptions to this requirement when it is not feasible to locate the refuge alternative according to this provision.

Proposed paragraph (b) contains provisions for ERPs for refuge alternatives constructed in place. The proposal would require that the ERP specify that stoppings and doors are designed to resist 15 psi overpressure.

Paragraph (b)(1) would require that the ERP include information on breathable air components approved by MSHA. Breathable air is intended to protect miners from injury or death from a contaminated atmosphere. MSHA is proposing that breathable air contain an oxygen concentration between 18.5 and 23 percent and a carbon dioxide concentration not exceeding a 1.0 percent time-weighted average and that at no time exceeds 2.5 percent for any 24-hour period. These concentrations are consistent with NIOSH's recommendation. Breathable air delivered from fans or compressors through pipes or air lines would need to meet the requirements of Part 7.

Paragraph (b)(2) would require that the ERP specify that the refuge alternative is capable of withstanding exposure to a flash fire of 300 °F for 3 seconds and a pressure wave of 15 psi overpressure for 0.2 seconds. Because the stoppings must protect the components of the refuge alternative and persons inside, the stoppings must be able to withstand both flash fires and explosive overpressures.

Proposed paragraph (c) contains provisions for ERPs for refuge alternatives consisting of materials pre-positioned for miners to construct a secure space with an isolated atmosphere.

Paragraph (c)(1) would require that the ERP specify the means to store and protect materials from being damaged when moved. The operator would be required to provide details of how the components are placed on a transportation device to provide security, transportation readiness and component integration to assure this alternative will be available when needed and readily constructed and activated. The materials should be arranged together and protected from potential damage when moved.

Paragraph (c)(2) would require that the ERP specify that the refuge alternative can withstand exposure to a flash fire of 300 °F for 3 seconds and a pressure wave of 15 psi overpressure for 0.2 seconds prior to construction and activation. Because this type of refuge alternative is constructed following an accident, materials and components would be stored in a crosscut or dead-end entry until needed. The materials and components must be stored in a container that will withstand a flash fire of 300 °F for 3 seconds and a pressure wave of 15 psi overpressure for 0.2 seconds so that the components would operate as intended and would be available and functional when needed.

Paragraph (c)(3) would require that the ERP specify the method for assuring that the refuge alternative could be constructed and functional in 10 minutes. Under the location requirements for refuge alternatives, miners would never be more than 30 minutes from either the portal or a refuge alternative. In the event of an accident, a miner with only one SCSR would have 30 minutes to reach the portal or a refuge alternative. The proposal would allot 10 minutes to establish a barrier between the interior and exterior atmospheres. The remaining 20 minutes of breathable air provided by the SCSR would allow time for purging the refuge alternative to establish a breathable atmosphere.

Paragraph (c)(4) would require that the ERP specify the method for having all components ready to be activated and used. Components include breathable air, harmful gas removal, air monitoring, communication, first aid, food and water, and sanitation. The proposal would assist MSHA in determining that components comprise a complete functional refuge alternative.

Paragraph (c)(5) would require that the ERP specify the means to assure that

the initial air quality is breathable once the refuge alternative is constructed. This refuge alternative is built following an accident, which could produce smoke and contaminated air in the area where the refuge alternative is constructed. Therefore, the atmosphere may be contaminated and would need purging or other effective methods as necessary, within 20 minutes of miners activating the refuge alternative, for the airlock to dilute the carbon monoxide concentration to 25 ppm or less and the methane concentration to 1.5 percent or less as persons enter. An operator would need to provide sufficient compressed air to purge the refuge alternative to establish a breathable atmosphere.

Paragraph (d) contains provisions for ERPs if the refuge alternative would only sustain persons for 48 hours. It would require that the ERP specify that advance arrangements have been made to assure that persons who cannot be rescued within 48 hours will receive additional supplies to sustain them until rescue. The basis for the proposal is MSHA's existing PIB on breathable air.

Paragraph (d)(1) would require that the advance arrangements specified in the ERP include pre-surveyed areas for refuge alternatives with closure errors of less than 20,000:1. The proposed provision is intended to assure that the survey that is done on the surface and the one performed underground are closed. The surface survey could be done with global positioning satellite equipment. When a survey connects back to itself, it is called a loop. The loop in this provision would begin with the surface survey of the location above the location of the refuge alternative and along a route to the underground location of the refuge alternative and back to the beginning survey location on the surface. If a loop is surveyed perfectly, the survey should come back to the exact point at which it started. If the loop does not come back to the exact starting point, it is called a closure error. Closure errors indicate that some or all of the survey measurements within a loop have errors. This provision assures accuracy in getting the borehole to the correct location underground.

Paragraph (d)(2) would require that the advance arrangements specified in the ERP include an analysis to indicate that the surface terrain, the strata, the capabilities of the drill rig, and all other factors that could affect drilling are such that a hole sufficient to provide required supplies and materials reliably can be promptly drilled within 48 hours of an accident at a mine. This provision is intended to assure that conditions that could interfere with or delay drilling are discovered and prepared for well in advance. The drill rig capabilities should be examined to assure the appropriate drill model is selected. This allows planning so that correct equipment and supplies are available when needed.

Paragraph (d)(3) would require that the advance arrangements specified in the ERP include permissions to cross properties, build roads, and construct drill sites. This provision is intended to assure that the arrangement to drill a borehole is done in advance so that normal delays that would occur during a mine emergency are eliminated and the drilling can proceed immediately upon arrival of the drill rig.

Paragraph (d)(4) would require that the advance arrangements specified in the ERP include an arrangement with a drilling contractor or other supplier of drilling services to provide a suitable drilling rig, personnel, and support so that a hole can be completed to the refuge alternative within 48 hours. MSHA expects that the arrangements that are finalized with the drilling contractor and other suppliers are such that all details including, but not limited to, mobilization, availability, ancillary services, back-up plans, drill-hole specifications, completion schedules, and spare parts are considered and included.

Paragraph (d)(5) would require that the advance arrangements specified in the ERP include the capability to promptly transport a drill rig to a pre-surveyed location such that a drilled hole would be completed and located near a refuge alternative structure within 48 hours of an accident at a mine. MSHA intends that this provision would assure the prompt delivery of the drill to the site. If the site is not easily accessible, the operator should have advance arrangements to have the appropriate equipment to transport, deliver, or carry the drill rig to the site. The operator should consider and prepare for potential delays. These procedures should be adequately evaluated to assure that 48 hours are more than reasonable. MSHA expects that the borehole would be drilled near the location of the refuge alternative. A method for supplying breathable air from the surface through the borehole would need to have the capability to provide a sufficient quantity of air to dilute any harmful gases in and around the refuge alternative.

MSHA requests comments on whether the rule should contain a provision that the advance arrangements specified in the ERP include a method for assuring that there will be a suitable means to connect the drilled hole to the refuge alternative and that the connection be made within 10 minutes. Under this provision, MSHA would expect the operator to have detailed plans for making connections from the drill hole casing to the refuge alternative. These plans would have to address the conditions that the miners will encounter during this planned work, including smoke, contaminated atmosphere, lack of adequate lighting, etc. The means to connect the drill hole casing should include all necessary clamps, fittings, connections, proper and sufficient hosing, mechanical supports, and tools. The connection to the refuge alternative should also be planned. The number of steps to accomplish this task of making the connections should be minimized and simplified.

Under this provision, MSHA would also expect that advance arrangements specified in the ERP include the capability to provide full-face breathing apparatus to persons exiting the refuge alternative to make necessary connections from the borehole. The breathing apparatus would be necessary to protect the miner from any gases or toxic products of combustion generated by a fire or explosion. The apparatus would need to have adequate capacity to allow sufficient time to complete the connection. The operator would also need to provide several breathing apparatus to enable occupants to come to the aid of an injured miner. Other devices, such as tag lines or tethers, would need to be available to assist miners in returning to the refuge alternative. Comments should be specific, including alternatives, rationale, safety benefits to miners, technological and economic feasibility and supporting data.

Paragraph (d)(6) would require that the advance arrangements specified in the ERP include a list of the pipes, air lines, approved fan, and approved compressor that will be used. This information decreases the possibility that an inappropriate or inadequate source of breathable air would be connected to the borehole.

Paragraph (d)(7) would require that the advance arrangements specified in the ERP include a method for assuring that the breathable air system, including compressors and fans, is designed for the planned conditions. The design should include consideration of pipe resistance, volumes and velocities needed, connections required on the surface, power needs, supplies required and necessary redundant or back-up requirements. The system should be on hand and ready to provide breathable air after the borehole is completed.

Paragraph (d)(8) would require that the advance arrangements specified in the ERP include a method for assuring the immediate availability of a backup source for supplying breathable air and a backup power source for surface installations. This information assists MSHA in evaluating the continued availability of breathable air.

Paragraph (e) would require the ERP to specify that the refuge alternative is stocked with essential supplies.

Paragraph (e)(1) would require that the ERP specify a minimum of 2,000 calories of food and 2.25 quarts of potable water per person per day to sustain the maximum number of persons reasonably expected to use the refuge alternative at one time. These requirements would provide adequate amounts of food and water and are consistent with NIOSH recommendations. These components should be replaced prior to their expiration.

Paragraph (e)(2) would require that the ERP specify that manuals and instructions for operation, training, and maintenance for the refuge alternative and components are provided. The proposal requires operators to obtain information necessary for the safe and effective use of the refuge alternative and its components.

Paragraphs (e)(3) and (e)(4) would require that the ERP specify that the refuge alternative is stocked with sufficient quantities of materials and tools to do repairs and first aid supplies.

MSHA proposed rules have provided flexibility in the type of refuge alternatives that will meet the requirements. The type of alternative is not specific to the seam heights. MSHA recognizes that the 60 cubic feet requirement may be of concern in mines with low seam heights.

Section 75.1508 Training and Records for Examination, Maintenance, Transportation, and Repair of Refuge Alternatives and Components

Paragraph (a) would require that persons be trained on examining, maintaining, transporting, and repairing refuge alternatives and components. A refuge alternative includes a number of functional components that are vital to the survival of persons using it. This proposal addresses training for routine examination, maintenance, transportation, and repair of refuge alternatives and components in addition to the training and drills provided all underground miners.

Paragraph (a)(1) would require the operator to assure that all persons assigned to examine, maintain, transport, and repair refuge alternatives and components are trained prior to performing the task. This training assures that these critical facilities and components are available and usable when needed. All facilities and components should be maintained using the manufacturer's specifications and procedures. The examiner should be trained in the aspects critical to the activation and use of the refuge alternative. In addition, paragraph (a)(1) would require training in proper transportation of the refuge alternative or component. Miners need to be aware of the safe procedures necessary to transport a refuge alternative or component from one location to another. Training in these procedures would include knowledge of all connections necessary for transportation, such as tow bars, clevises, and hitches. MSHA requests comments on these training requirements and whether it would be more appropriate to include training on examining, maintaining, transporting, and repairing refuge alternatives under the training provisions of Part 48. Comments should be specific, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and supporting data.

Paragraph (a)(2) would require the operator to certify, by signature and date, the training of persons who examine, maintain, transport, and repair refuge alternatives and components. The training certifications help MSHA and the operator assure that the appropriate personnel have received the required training. Maintenance and repair work on refuge alternatives and components will not occur at regular intervals. To facilitate these maintenance tasks a just-in-time approach to training is required. The required training can vary given the scope of the tasks and the interval since the last training in that same task.

Paragraph (b) would require the person conducting the maintenance or repair to make a record of all corrective action taken at the completion of each repair required by this paragraph. Records of training help assure that persons are periodically re-trained to prevent skills degradation.

Paragraph (c) would require that the mine operator keep the training certifications and repair records at the mine for one year. Certification and repair records are necessary to help MSHA and the operator identify any systemic defects or problems with the refuge alternative are identified and corrected.

Section 75.1600–3 Communications Facilities; Refuge Alternatives

Paragraph (a) would require that refuge alternatives be provided with a two-way communication system and an additional communication system when approved in the mine operator's Emergency Response Plan. Communications with the persons in refuge alternatives are vital to mine rescue efforts. The knowledge of where miners are in refuge alternatives, their condition, and the conditions in the mine may make the difference between life-and-death in a post-accident crisis.

Paragraph (a)(1) would require a two-way communication facility that is a part of the mine communication system, which can be used from inside the refuge alternative. The communications device must be usable without further exposing persons to smoke and toxic gases. MSHA solicits comments on the proposed two-way communication facility. Please be specific in your response, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and data to support your comments.

Paragraph (a)(2) would require an additional communication system when approved in the operator's Emergency Response Plan (ERP).

III. Executive Order 12866

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of regulations. To comply with E.O. 12866, MSHA has prepared a Preliminary Regulatory Economic Analysis (PREA) for this proposed rule. The PREA contains supporting data and explanation for the summary materials presented in this preamble, including the covered mining industry, costs and benefits, feasibility, small business impacts, and paperwork. The PREA can be found at MSHA's Web site at *http://www.msha.gov/REGSINFO.HTM*. A copy of the PREA can be obtained from MSHA's Office of Standards, Regulations and Variances at the address in the **ADDRESSES** section of this preamble. MSHA requests comments on all the estimates of costs and benefits presented in this preamble and in the PREA, and on the data and assumptions the Agency used to develop estimates.

Under E.O. 12866, a significant regulatory action is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of

entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. Based on the PREA, MSHA has determined that this proposed rule would have an annual effect of $100 million or more on the economy and that, therefore, it is an economically significant regulatory action.

Congressional Review Act

The costs in the PREA represent what MSHA believes to be the upper bound of the range of estimated compliance costs: $102.6 million first year and $43.3 million yearly. MSHA has presented these upper-bound estimates as a conservative approach to estimating compliance costs. However, based upon a review of literature and discussions with manufacturers of refuge alternatives, MSHA believes that a more realistic assumption of the types of refuge alternatives required under the proposal provides a lower-bound estimate of costs: $84.1 million first year and $38.7 million yearly. MSHA has revised the PREA to include these lower-bound estimates of costs. If costs are more in line with the lower-bound estimates, the Congressional Review Act (CRA) would not apply. If costs are more in line with MSHA's upper-bound estimates, then the rule would be classified as a major rule and MSHA would comply with the CRA. Under the CRA, major rules generally cannot take effect until 60 days after the rule is published.

A. Population at Risk

The proposal would apply to all underground coal mines in the United States. Based on the most recent MSHA data, there were 624 underground coal mines, employing approximately 42,200 miners, in the United States in 2007, of which 613 mines employ miners working underground. These 613 mines employ approximately 37,800 miners and 5,100 miners working underground, for a total of approximately 42,900 workers underground.

B. Benefits

1. Introduction

One of the goals of the MINER Act is to improve emergency response capability in underground coal mines. MSHA has published a number of standards in the last several years and has stated in them that, in the event of a mine emergency in an underground coal mine, the miner should be trained to evacuate the mine. Over the years, MSHA has promulgated a number of rules that address the safety of miners in the event of explosions, fires, or inundations in underground coal mines. These rules include requirements which address escape from a mine, such as: Two separate and distinct escapeways for each working section, maps in an underground mine that delineate escape routes out of the mine, miner participation in practice drills to escape the mine in an emergency situation, and life-saving devices such as lifelines and self-contained self-rescue (SCSR) devices to facilitate escape. This proposed rule would require refuge alternatives in the event that escape is delayed or not possible.

This proposal would improve mine operators' preparedness for mine emergencies and increase miners' safety by requiring refuge alternatives underground to protect and sustain miners trapped when a life-threatening event occurs that prevents escape. The refuge alternatives proposed in the rule may also assist miners in escaping from the mine.

2. Evaluation of Accident and Injury Data

MSHA has evaluated its accident and injury data from 1900 through 2006. During that period, 264 miners who were alive after a mine accident died later during rescue or escape. Because forty-three lives have previously been attributed to other recent MSHA regulatory actions, a total of 221 lives could have been saved over the 107 year period for purposes of estimating benefits for this proposal. If refuge alternatives had been available, MSHA estimates that the range of lives saved would be between a low of 25 percent and a high of 75 percent. MSHA estimates that 55 lives could have been saved under the lower estimate, and that 166 lives could have been saved under the higher estimate. Using these estimates, the proposal would result in approximately one-half life saved per year under the lower estimate or one and one-half lives saved per year under the higher estimate.

3. Conclusion

The proposed rule would implement the MINER Act. It would require that mine operators install refuge alternatives and would include requirements for use, transport, maintenance, and inspection of refuge alternatives. These provisions would be essential for effective operation of the refuge alternatives during an emergency. The proposed rule would also include requirements for training of miners on how to use refuge alternatives during an emergency. To facilitate mine emergency preparedness, refuge alternative training would be integrated into existing escapeway drill training—quarterly mine evacuation training and annual expectations training. The proposed rule would include requirements for installing necessary roof support in areas where refuge alternatives are placed to assure that they will not be damaged. It would also require that the locations of refuge alternatives be noted on the mine maps so that miners can easily locate the refuge alternatives in an emergency. The proposal would also require that miners be trained to maintain and repair refuge alternatives. In addition, the proposal would require that refuge alternatives (and their components) be inspected before each shift to assure that they are always functioning properly and will be effective in the event of any emergency. The proposal would also include requirements for the location of refuge alternatives to assure that they are readily accessible to all miners underground when an emergency occurs.

C. Compliance Costs

MSHA estimates that the total yearly cost of the proposed rule would be approximately $43.3 million for underground coal mine operators and refuge alternative manufacturers. MSHA estimates that the proposed rule would result in a total yearly cost of $2.1 million for manufacturers and $41.2 million for underground coal mine operators.

The first-year cost of the proposed rule is approximately $102.6 million. The costs in the PREA represent what MSHA believes to be the upper bound of the range of estimated compliance costs: $102.6 million first year and $43.3 million yearly. MSHA has presented these upper-bound estimates as a conservative approach to estimating compliance costs. However, based upon a review of literature and discussions with manufacturers of refuge alternatives, MSHA believes that a more realistic assumption of the types of refuge alternatives required under the proposal provides a lower-bound estimate of costs: $84.1 million first year and $38.7 million yearly. MSHA has revised the PREA to include these lower-bound estimates of costs.

By mine size, the estimated yearly cost would be $3.1 million for operators with 1–19 employees; $33.1 million for operators with 20–500 employees; and $5 million for operators with 501+ employees.

The approximate cost of the proposed rule by provision would be: $2.1 million for refuge alternative and component application and approval costs; $21.8 million for the costs to purchase, install,

transport, and repair refuge alternatives; $6.6 million for the costs for pre-shift exams and revisions to plans and maps; and $12.8 million for training costs.

Table 1 presents a summary of the yearly costs of the proposed rule by mine size and by cost category. MSHA solicits comments on the yearly costs of the proposed rule. Comments should be specific including alternatives, rationale, and supporting data.

TABLE 1.—SUMMARY OF YEARLY COSTS OF PROPOSED RULE

Detail				Yearly cost
Cost to Manufacturers				
Application and Approval Costs				$2.1 million.
Cost to Mine Operators				
	Mine size			
	1–19 employees	20–500 employees	501+ employees	Total
Cost for Purchase, Installation, Moving, and Repair of Refuge Alternatives.	$2.4 million	$17.5 million	$1.9 million	$21.8 million.
Cost for Pre-Shift Exams and Revisions to Plans, Maps, and Programs.	$300,000	$5.2 million	$1.2 million	$6.6 million.
Cost for Training	$520,000	$10.4 million	$1.9 million	$12.8 million.
Total	$3.1 million	$33.1 million	$5 million	$41.2 million.

Note: In some cases, the totals may deviate from the sum of the components due to rounding.

IV. Feasibility

Although MSHA has concluded that the requirements of the proposed rule would be both technologically and economically feasible, MSHA recognizes that all refuge alternative applications may not be appropriate for all mining conditions.

A. Technological Feasibility

MSHA believes that this proposed rule is feasible because refuge alternatives are currently being manufactured for use in underground coal mines in West Virginia and Illinois. MSHA recognizes that it may not be feasible to locate the refuge alternative according to this proposal. In addition, MSHA recognizes that using the refuge alternatives in low coal mines could be problematic. The Agency further recognizes that certain types of refuge alternatives may not be feasible in low coal mines. MSHA also recognizes that research on some requirements of refuge alternatives, for example, post accident communications, is on-going. MSHA will continue to work with NIOSH and the mining community as refuge alternative technology continues to be developed. MSHA solicits comment from the public on the location of refuge alternatives, the use of refuge alternatives in low coal mines, and the feasibility of requirements for refuge alternatives. Please be specific in your response, including alternatives, rationale, safety benefits to miners, technological and economic feasibility, and data to support your comment.

Also, MSHA may approve refuge alternatives or components that incorporate new technology, if the applicant demonstrates that the refuge alternative or components provide no less protection than those meeting the requirements of the proposed rule.

B. Economic Feasibility

MSHA estimated that the yearly compliance cost of the proposed rule is approximately $41.2 million for underground coal mine operators, which is 0.3 percent of annual revenue of $14.1 billion for all underground coal mines. MSHA concludes that the proposed rule would be economically feasible for these mines because the total yearly compliance cost is below one percent of the estimated annual revenue for all underground coal mines.

V. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the proposed rule on small entities. Based on that analysis, MSHA has notified the Chief Counsel for Advocacy, Small Business Administration (SBA), and made the certification under the RFA at 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is presented in the PREA and summarized below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of the proposed rule on small entities, MSHA must use the SBA definition for a small entity, or after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not established an alternative definition and is required to use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

MSHA has also examined the impact of this proposed rule on underground coal mines with fewer than 20 employees, which MSHA has traditionally referred to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, the cost of complying with MSHA's proposed rule and the impact of the proposed rule on small mines will also be different.

This analysis complies with the legal requirements of the RFA for an analysis of the impact on ''small entities'' while continuing MSHA's traditional concern for ''small mines.''

B. Factual Basis for Certification

MSHA initially evaluates the impact on small entities by comparing the estimated compliance cost of a rule for

small entities in the sector affected by the rule to the estimated revenue of the affected sector. When the estimated compliance cost is less than one percent of the estimated revenue, the Agency believes it is generally appropriate to conclude that the rule would not have a significant economic impact on a substantial number of small entities. When the estimated compliance cost exceeds one percent of revenue, MSHA investigates whether further analysis is required.

Total underground coal production in 2007 was approximately 278 million tons for mines with 500 or fewer employees. Using the 2007 price of underground coal of $40.37 per ton, MSHA estimates that underground coal revenue was approximately $11.2 billion for mines with 500 or fewer employees. Under MSHA's upper-bound estimate, the yearly cost of the proposed rule for mines with 500 or fewer employees is estimated to be approximately $36 million, or approximately $59 thousand per mine. This is equal to approximately 0.32 percent of annual revenue. Under MSHA's lower-bound estimate, the yearly cost of the proposed rule for mines with 500 or fewer employees is estimated to be approximately $32 million, or approximately $52 thousand per mine. This is equal to approximately 0.29 percent of annual revenue. Since, under both the upper and lower-bound estimates, the yearly cost of the proposed rule is less than one percent of annual revenue for small underground coal mines, as defined by SBA, MSHA has certified that the proposed rule would not have a significant impact on a substantial number of small mining entities, as defined by SBA. However, MSHA has provided, in the PREA accompanying this rule, a complete analysis of the cost impact on this category of mines.

Total underground coal production in 2007 was approximately 7.7 million tons for mines with fewer than 20 employees. Using the 2007 price of underground coal of $40.37 per ton, MSHA estimates that underground coal revenue was approximately $310.2 million for mines with fewer than 20 employees. Under MSHA's upper-bound estimate, the yearly cost of the proposed rule for mines with fewer than 20 employees is estimated to be approximately $3.15 million, or approximately $14,116 per mine. This is equal to approximately 1.02 percent of annual revenue. Under MSHA's lower-bound estimate, the yearly cost for mines with fewer than 20 employees is estimated to be approximately $2.8 million, or approximately $13 thousand per mine. This is equal to approximately 0.91 percent of annual revenue.

In the Agency's PREA, MSHA estimates that some mines might experience costs somewhat higher than the average per mine in its size category while others might experience lower costs. Even though the analysis reflects a range of impacts for different mine sizes, from 0.32 to 1.02 percent of annual revenue under MSHA's upper-bound estimate and from 0.29 to 0.91 percent of annual revenue under MSHA's lower-bound estimate, the Agency concludes that this is not a significant economic impact on a substantial number of small mines. MSHA has provided, in the PREA accompanying this rule, a complete analysis of the cost impact on this category of mines.

VI. Paperwork Reduction Act

A. Summary

This proposed rule contains information collection requirements that would affect requirements in existing paperwork packages with OMB Control Numbers 1219–0004, 1219–0054, 1219–0066, 1219–0073, 1219–0088, and 1219–0141. The new information collection requirements contained in the proposed rule are found in proposed §§ 7.503, 75.221, 75.360, 75.372, 75.1200, 75.1502, 75.1505, 75.1506, 75.1507, and 75.1508, which would establish new approval requirements for refuge alternatives. This proposed rule would result in 90,189 burden hours and related costs of approximately $6.8 million in the first year the rule is in effect. In the second year the rule is in effect, and every year thereafter, the proposed rule would result in 78,138 burden hours and related costs of approximately $6.6 million.

For a detailed summary of the burden hours and related costs by provision, see the PREA accompanying this proposed rule. The PREA is posted on MSHA's Web site at *http://www.msha.gov/REGSINFO.HTM.* A copy of the PREA can be obtained from MSHA's Office of Standards, Regulations, and Variances at the address provided in the **ADDRESSES** section of this preamble.

B. Procedural Details

The information collection package has been submitted to OMB for review under 44 U.S.C. 3504, paragraph (h) of the Paperwork Reduction Act of 1995, as amended. A copy of the information collection package can be obtained from the Department of Labor by electronic mail request to *king.darrin@dol.gov* or by phone request to 202–693–4129.

MSHA requests comments to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments on the information collection requirements should be sent to both OMB and MSHA. Addresses for both offices can be found in the **ADDRESSES** section of this preamble. The regulated community is not required to respond to any collection of information unless it displays a current, valid, OMB control number. MSHA displays OMB control numbers in 30 CFR part 3.

VII. Other Regulatory Analyses

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the proposed rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.). MSHA has determined that the proposed rule would not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments or significantly or uniquely affect small governments. MSHA estimates that the proposed rule would increase private sector expenditures by more than $100 million in the first year and has included an analysis of the costs of the requirements of the proposed rule in this PREA.

B. Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

The proposed rule would have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, § 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

The proposed rule would not implement a policy with takings implications. Accordingly, Executive Order 12630 requires no further agency action or analysis.

D. Executive Order 12988: Civil Justice Reform

The proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, the proposed rule meets the applicable standards provided in § 3 of Executive Order 12988.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The proposed rule would have no adverse impact on children. Accordingly, Executive Order 13045 requires no further agency action or analysis.

F. Executive Order 13132: Federalism

The proposed rule would not have ''federalism implications'' because it would not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' MSHA acknowledges that West Virginia and Illinois have laws and/or regulations on refuge alternatives and has drafted the proposed rule to minimize conflict with these laws and regulations.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The proposed rule would not have ''tribal implications'' because it would 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.'' Accordingly, Executive Order 13175 requires no further agency action or analysis.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed rule has been reviewed for its impact on the supply, distribution, and use of energy because it applies to the coal mining industry. Insofar as the proposed rule would result in yearly costs of approximately $41.2 million to the underground coal mining industry, relative to annual revenues of $14.1 billion in 2007, it is not a ''significant energy action'' because it is not ''likely to have a significant adverse effect on the supply, distribution, or use of energy * * * (including a shortfall in supply, price increases, and increased use of foreign supplies).'' Accordingly, Executive Order 13211 requires no further Agency action or analysis.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined and certified that the proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

30 CFR Part 7

Coal mines, Mine safety and health, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 75

Coal mines, Mine safety and health, Reporting and recordkeeping requirements, Safety, Training programs, Underground mining.

Dated: June 11, 2008.

Richard E. Stickler,

Acting Assistant Secretary for Mine Safety and Health.

For the reasons discussed in the preamble, the Mine Safety and Health Administration is proposing to amend 30 CFR parts 7 and 75 as follows:

PART 7—TESTING BY APPLICANT OR THIRD PARTY—[AMENDED]

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

Authority: 30 U.S.C. 957.

2. Add new subpart L to read as follows:

Subpart L—Refuge Alternatives

Sec.
7.501 Purpose and scope.
7.502 Definitions.
7.503 Application requirements.
7.504 Refuge alternatives and components; general requirements.
7.505 Structural components.
7.506 Breathable air components.
7.507 Air-monitoring components.
7.508 Harmful gas removal components.
7.509 Approval markings.
7.510 New technology.

Subpart L—Refuge Alternatives

§ 7.501 Purpose and scope.

This subpart L establishes requirements for MSHA approval of a refuge alternative and components for use in underground coal mines. Refuge alternatives are intended to provide a life-sustaining environment for miners trapped underground when escape is impossible. Refuge alternatives may also be used to facilitate escape.

§ 7.502 Definitions.

The following definitions apply in this subpart:

Apparent temperature. The combined effects of air movement, heat, and humidity on the human body.

Breathable oxygen. Oxygen that is at least 99 percent pure with no harmful contaminants.

Flash fire. A fire that rapidly spreads through a diffuse fuel, such as airborne coal dust or methane, without producing damaging pressure.

Noncombustible material. Material, such as concrete or steel, that will not ignite, burn, support combustion, or release flammable vapors when subjected to fire or heat.

Overpressure. The highest pressure over the background atmospheric pressure that results from an explosion, which includes the impact of the pressure wave on an object.

Refuge alternative. A protected, secure space with an isolated atmosphere and integrated components that create a life-sustaining environment for persons trapped in an underground coal mine.

§ 7.503 Application requirements.

(a) An application for approval of a refuge alternative or component shall include:

(1) The refuge alternative or component's make and model number, if applicable.

(2) A list of the refuge alternative or component's parts that includes—

(i) The MSHA approval number for electric-powered equipment;

(ii) Each component's or part's in-mine shelf life, service life, and recommended replacement schedule; and

(iii) The materials used in each component or part with their MSHA approval number or a statement that the materials are noncombustible.

(3) The capacity and duration (the number of persons it is designed to maintain and for how long) of the refuge alternative or component on a per-person per-day basis.

(4) The length, width, and height of the space required for storage of each component.

(b) The application for approval of the refuge alternative shall specify the following:

(1) A description of the breathable air component, including drawings, air-supply sources, piping, regulators, and controls.

(2) The maximum volume, excluding the airlock; the dimensions of space provided for each person using the refuge alternative; and the interior dimensions of the airlock.

(3) The maximum allowable positive pressures in the interior space and the airlock and describe the means used to limit or control the positive pressure.

(4) The maximum allowable apparent temperature of the interior space and the airlock and the means to control the apparent temperature.

(5) Drawings that show the features of each component and contain sufficient information to document compliance with the technical requirements.

(6) A training manual that contains sufficient detail for each refuge alternative or component addressing in-mine transportation, operation, and maintenance of the unit.

(7) A summary of the procedures for constructing and activating refuge alternatives.

(8) A summary of the procedures for using the refuge alternative.

(9) The results of inspections, evaluations, calculations, and tests conducted under this subpart.

(c) The application for approval of the air-monitoring component shall specify the following:

(1) The operating range, type of sensor, gas or gases measured, and environmental limitations, including the cross-sensitivity to other gases, of each detector or device in the air-monitoring component.

(2) The method for operation of the individual devices so that they function as necessary to test gas concentrations over a 96-hour period.

(3) Procedures for monitoring and maintaining breathable air in the airlock, before and after purging.

(4) Instructions for determining the quality of the atmosphere in the airlock and refuge alternative interior and a means to maintain breathable air in the airlock.

(d) The application for approval of the harmful gas removal component shall specify the following:

(1) The volume of breathable air available for removing harmful gas both at start up and while persons enter through the airlock.

(2) The maximum volume of each gas that the component is designed to remove on a per-miner per-day basis.

(e) The applicant shall certify that each component is constructed of suitable materials, is of good quality workmanship, is based on sound engineering principles, is safe for its intended use, and is designed to be compatible with other components in the refuge alternative, within the limitations specified in the approval.

§ 7.504 Refuge alternatives and components; general requirements.

(a) Refuge alternatives and components:

(1) Shall be intrinsically safe for use and designed with fire and explosion-proof features for use with an oxygen supply component.

(2) Shall not produce continuous noise levels in excess of 85 dBA in the structure's interior.

(3) Shall not liberate harmful or irritating gases or particulates into the structure's interior or airlock.

(4) Shall be designed so that the refuge alternative can be safely moved with the use of appropriate devices such as tow bars.

(5) Shall be designed to withstand forces from collision of the refuge alternative structure during transport or handling.

(b) The apparent temperature in the structure shall be controlled as follows:

(1) When used in accordance with the manufacturer's instructions and defined limitations, the apparent temperature in the fully occupied refuge alternative shall not exceed 95° Fahrenheit.

(2) Calculations or tests shall be conducted to determine the maximum apparent temperature in the refuge alternative when used at maximum occupancy and in conjunction with required components. The results shall be reported in the application.

(c) The refuge alternative shall include:

(1) Accommodations for the following means of communications—

(i) A telephone or an equivalent two-way facility that can be used from inside the refuge alternative, and

(ii) A two-way wireless system when it is approved in the operator's Emergency Response Plan (ERP).

(2) Lighting sufficient to perform tasks;

(3) A means to contain human waste effectively and minimize objectionable odors;

(4) First aid supplies; and

(5) Materials, parts, and tools for repairs of components.

(d) Containers used for storage of refuge alternative components shall be:

(1) Airtight, waterproof, and rodent-proof;

(2) Easy to open and close without the use of tools; and

(3) Conspicuously marked with an expiration date and instructions for use.

§ 7.505 Structural components.

(a) The structure shall—

(1) Provide at least 15 square feet of floor space and at least 60 cubic feet of volume per person;

(2) Include storage space that secures and protects the components during transport and that permits ready access to components for inspection, maintenance, and activation;

(3) Include an airlock that creates a barrier and isolates the interior space from the mine atmosphere, except for a refuge alternative capable of maintaining adequate positive pressure.

(i) The airlock shall be designed for multiple uses to accommodate the structure's maximum occupancy.

(ii) The airlock shall be configured to accommodate a stretcher without compromising its function;

(4) Be designed and constructed to withstand 15 pounds per square inch (psi) overpressure for 0.2 seconds prior to activation;

(5) Be designed and constructed to withstand exposure to a flash fire of 300° Fahrenheit for 3 seconds prior to activation;

(6) Be constructed with materials that are noncombustible or MSHA-approved flame resistant;

(7) Be constructed from reinforced material that has sufficient durability to withstand routine handling and resist puncture and tearing during activation and use;

(8) Be guarded or reinforced to prevent damage to the structure that would hinder activation, entry, or use; and

(9) Permit measurement of outside gas concentrations without exiting the structure or allowing entry of the outside atmosphere.

(b) Inspections or tests shall be conducted to determine or demonstrate that—

(1) Trained persons can fully activate the structure, without the use of tools, within 10 minutes of reaching the refuge alternative;

(2) An overpressure of 15 psi applied to the pre-activated refuge alternative structure for 0.2 seconds does not allow gases to pass through the barrier separating the interior and exterior atmospheres;

(3) A flash fire of 300° Fahrenheit for 3 seconds does not allow gases to pass from the outside to the inside of the structure;

(4) The overpressure forces of 15 psi do not prevent the stored components from operating;

(5) A flash fire of 300° Fahrenheit for 3 seconds does not prevent the stored components from operating;

(6) Each structure resists puncture and tearing when tested in accordance with ASTM D2582–07 *Standard Test Method for Puncture-Propagation Tear Resistance of Plastic Film and Thin Sheeting;*

(7) Each reasonably anticipated repair can be completed within 10 minutes of opening the storage space for repair materials and tools; and

(8) No harmful gases or noticeable odors are released from nonmetallic materials before or after the flash fire test. The test shall determine the identity and concentrations of gases released.

(c) If pressurized air is used to activate the structure or maintain its shape, the structure shall—(1) Include a pressure regulator or other means to prevent overpressurization of the structure, and

(2) Provide a means to repair and re-pressurize the structure in case of failure of the structure or loss of air pressure.

(d) The refuge alternative structure shall provide a means—

(1) To conduct a preshift examination, without entering the structure, of components critical for activation; and

(2) To indicate unauthorized entry or tampering.

§ 7.506 Breathable air components.

(a) Breathable air shall be supplied by compressed air cylinders, compressed breathable-oxygen cylinders, fans installed on the surface or compressors installed on the surface. Only uncontaminated breathable air is allowed to be supplied to the refuge alternative.

(b) Mechanisms shall be provided and procedures shall be followed such that, within the refuge alternative—

(1) The breathable air sustains each person for 96 hours,

(2) The oxygen concentration is maintained at levels between 18.5 and 23 percent, and

(3) The average carbon dioxide concentration is maintained at 1.0 percent or less, with excursions not to exceed 2.5 percent.

(c) Breathable air supplied by compressed air from cylinders, fans, or compressors shall provide a minimum flow rate of 12.5 cubic feet per minute of breathable air for each miner.

(1) Fans or compressors shall meet the following:

(i) Be equipped with a carbon monoxide detector located at the surface that automatically provides a visual and audible alarm if carbon monoxide in supplied air exceeds 10 parts per million (ppm).

(ii) Provide in-line air-purifying sorbent beds and filters or other equivalent means to assure the breathing air quality and prevent condensation.

(iii) Include maintenance instructions that provide specifications for periodic replacement or refurbishment of sorbent beds and filters or alternate means.

(iv) Provide positive pressure and an automatic means to assure that the pressure is relieved at 0.25 psi above mine atmospheric pressure in the refuge alternative.

(v) Include warnings to assure that only uncontaminated breathable air is supplied to the refuge alternative.

(vi) Include air lines to supply breathable air from the fan or compressor to the refuge alternative.

(A) Air lines shall be capable of preventing or removing water accumulation.

(B) Air lines shall be designed and protected to prevent damage during normal mining operations, a flash fire of 300° Fahrenheit (F) for 3 seconds, a pressure wave of 15 psi overpressure for 0.2 seconds, and ground failure.

(vii) Assure that harmful or explosive gases, water, and other materials cannot enter the breathable air.

(2) Redundancy of fans or compressors and each power source shall be provided to permit prompt re-activation of equipment in the event of failure.

(d) Compressed breathable oxygen shall—

(1) Include instructions for activation and operation;

(2) Provide oxygen at a minimum flow rate of 1.32 cubic feet per hour per miner;

(3) Include a means to readily regulate the pressure and volume of the compressed oxygen;

(4) Include an independent regulator as a backup in case of failure; and

(5) Be used only with regulators, piping, and other equipment that is certified and maintained to prevent ignition or combustion.

(e) Carbon dioxide removal components shall—

(1) Include instructions for activation and operation;

(2) Be used with breathable air cylinders or oxygen cylinders;

(3) Remove carbon dioxide at a rate of 1.08 cubic feet per hour per miner;

(4) Be contained to prevent contact with the chemicals and the release of airborne particles;

(5) Be provided and packaged with all necessary means to expedite use, such as hangers, racks, and clips; and

(6) Be stored in containers that are conspicuously marked with instructions for disposal of used chemicals.

(f) The carbon dioxide removal component shall be tested and evaluated to demonstrate that it can maintain average carbon dioxide concentration at 1.0 percent or less, with excursions not to exceed 2.5 percent under the following conditions:

(1) At 55 °F (±4 °F), 1 atmosphere (±0.5 percent), and 50 percent (±0.5 percent) relative humidity.

(2) At 55 °F (±4 °F), 1 atmosphere (±0.5 percent), and 100 percent (±0.5 percent) relative humidity.

(3) At 90 °F (±4 °F), 1 atmosphere (±0.5 percent), and 50 percent (±0.5 percent) relative humidity.

(4) At 82 °F (±4 °F), 1 atmosphere (±0.5 percent), and 100 percent (±0.5 percent) relative humidity.

(g) Respirators or breathing apparatus used with a breathable air component shall—

(1) Be NIOSH-approved with a means of flow and pressure regulation;

(2) Be equipped with fittings that connect only to a breathable air compressed line;

(3) Allow for communication, and the provision of food, and water while preventing the entry of any outside atmosphere; and

(4) Be capable of being worn for up to 96 hours.

(h) The applicant shall prepare and submit a risk analysis to assure that the breathable air component will not cause an ignition.

(1) The analysis shall specifically address oxygen fire hazards and fire hazards from chemicals used for removal of carbon dioxide.

(2) The analysis shall identify the means used to prevent any ignition source.

(i) The breathable air component shall include a fire extinguisher that—

(1) Is compatible with the chemicals used for removal of carbon dioxide; and

(2) Uses a non-toxic extinguishing agent that does not produce a hazardous by-product when heated or activated.

§ 7.507 Air-monitoring components.

(a) Each refuge alternative shall have an air-monitoring component that provides persons inside with the ability to determine the concentrations of carbon dioxide, carbon monoxide, oxygen, and methane, inside and outside the structure, including the airlock.

(b) Refuge alternatives designed for use in mines with a history of harmful

gases, other than carbon monoxide, carbon dioxide, and methane, shall be equipped to measure the harmful gases' concentrations.

(c) The air-monitoring component shall be inspected or tested and the test results shall be included in the application.

(d) All air-monitoring components shall be approved as permissible by MSHA and the MSHA approval number shall be specified in the application.

(e) The air-monitoring component shall meet the following:

(1) The total measurement error, including the cross-sensitivity to other gases, shall not exceed ±10 percent of the reading, except as specified in the approval.

(2) The measurement error limits shall not be exceeded after startup, after 8 hours of continuous operation, after 96 hours of storage, and after exposure to atmospheres with a carbon monoxide concentration of 999 ppm (full-scale), a carbon dioxide concentration of 3 percent, and full-scale concentrations of other gases.

(3) Calibration gas values shall be traceable to the National Institute for Standards and Testing (NIST) ''Standard Reference Materials'' (SRMs).

(4) The analytical accuracy of the calibration gas values shall be within 2.0 percent of NIST gas standards.

(5) The analytical accuracy of the span gas values shall be within 2.0 percent of NIST gas standards.

(6) The detectors shall be capable of being kept fully charged and ready for immediate use.

§ 7.508 Harmful gas removal components.

(a) Each refuge alternative shall include means for removing harmful gases.

(1) Purging or other effective methods shall be provided for the airlock to dilute the carbon monoxide concentration to 25 ppm or less and the methane concentration to 1.5 percent or less as persons enter, within 20 minutes of miners activating the refuge alternative.

(2) Chemical scrubbing or other effective methods shall be provided to maintain the average carbon dioxide concentration in the occupied structure at 1.0 percent or less with excursions not to exceed 2.5 percent.

(b) The harmful gas removal component shall meet the following requirements:

(1) Each chemical for removal of harmful gas shall be contained such that when stored or used they cannot come in contact with persons.

(2) Each chemical used for removal of harmful gas shall be provided together with all materials, parts, or equipment necessary for its use.

(3) Each chemical used for removal of harmful gas shall be stored in an approved container that is conspicuously marked with the manufacturer's instructions for disposal of used chemical.

(c) Each harmful gas removal component shall be tested to determine its ability to remove harmful gases.

(1) The component shall be tested in a refuge alternative structure that is representative of the configuration and maximum volume from which the component is designed to remove harmful gases.

(i) The test shall include three sampling points located vertically along the centerlines of the length and width of the structure and equally spaced over the horizontal centerline of the height of the structure.

(ii) The structure shall be sealed airtight.

(iii) The operating gas sampling instruments shall be placed inside the structure and continuously exposed to the test atmosphere.

(iv) Sampling instruments shall simultaneously measure the gas concentrations at the three sampling points.

(2) For testing the component's ability to remove carbon monoxide, the structure shall be filled with a test gas of either purified synthetic air or purified nitrogen that contains 400 ppm carbon monoxide.

(i) After a stable concentration of 400 ppm, ±5 percent, carbon monoxide has been obtained for 5 minutes at all three sampling points, a timer shall be started and the structure shall be purged or carbon monoxide otherwise removed.

(ii) Carbon monoxide concentration readings from each of the three sampling devices shall be recorded every 2 minutes.

(iii) The time from the start of harmful gas removal until the readings of the three sampling instruments shall all indicate a carbon monoxide concentration of 25 ppm or less shall be recorded.

(d) Alternate performance tests may be conducted if the tests provide the same level of assurance of the harmful gas removal component's capability as the tests specified in paragraph (c) of this section. Alternate tests shall be specified in the approval application.

§ 7.509 Approval markings.

(a) Each approved refuge alternative or component shall be identified by a legible, permanent approval marking that is securely and conspicuously attached to the component or its container.

(b) The approval marking shall include the refuge alternative's and component's MSHA approval number and expiration date.

(c) The refuge alternative structure shall provide a conspicuous means for indicating an out-of-service status, including the reason it is out of service.

(d) The airlock shall be conspicuously marked with the recommended maximum number of persons that can use it at one time.

§ 7.510 New technology.

MSHA may approve a refuge alternative or a component that incorporates new knowledge or technology, if the applicant demonstrates that the refuge alternative or component provides no less protection than those meeting the requirements of this subpart.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

3. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Amend § 75.221 by adding paragraph (a)(12) to read as follows:

§ 75.221 Roof control plan information.

(a) * * *

(12) A description of the roof and rib support necessary for the refuge alternatives.

* * * * *

5. Amend § 75.313 by adding paragraph (f) to read as follows:

§ 75.313 Main mine fan stoppage with persons underground.

* * * * *

(f) Any electric-powered refuge alternative component that may be operated during fan stoppages shall be intrinsically safe.

6. Amend § 75.360 by redesignating paragraphs (d) through (g) as paragraphs (e) through (h) and adding a new paragraph (d) to read as follows:

§ 75.360 Preshift examination at fixed intervals.

* * * * *

(d) The person conducting the preshift examination shall check the refuge alternative for damage, the integrity of the tamper-evident seal and the mechanisms required to activate the refuge alternative, and the ready availability of compressed oxygen and air.

* * * * *

7. Amend § 75.372 by revising paragraph (b)(11) to read as follows:

§ 75.372 Mine ventilation map.

* * * * *

(b) * * *

(11) The location of all escapeways and refuge alternatives.

* * * * *

8. Amend § 75.1200 by revising paragraph (g) to read as follows:

§ 75.1200 Mine map.

* * * * *

(g) Escapeways and refuge alternatives;

* * * * *

9. Amend § 75.1202–1 by revising paragraph (b)(4) to read as follows.

§ 75.1202–1 Temporary notations, revisions, and supplements.

* * * * *

(b) * * *

(4) Escapeways and refuge alternatives designated by means of symbols.

§ 75.1500 [Removed and reserved]

10. Remove and reserve § 75.1500.

11. Amend § 75.1501 by revising paragraph (a)(1) to read as follows:

§ 75.1501 Emergency evacuations.

(a) * * *

(1) The responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the locations of the mine escapeways and refuge alternatives, the mine communications system, any mine monitoring system if used, locations of firefighting equipment, the mine's Emergency Response Plan, the Mine Rescue Notification Plan, and the Mine Emergency Evacuation and Firefighting Program of Instruction.

* * * * *

12. Amend § 75.1502 as follows:

A. Redesignate paragraphs (c)(3) through (c)(8) as paragraphs (c)(4) through (c)(9).

B. Add new paragraph (c)(3).

C. Revise newly designated paragraphs (c)(4)(iv) and (v).

D. Revise newly designated paragraph (c)(8).

E. Add paragraph (c)(4)(vi).

F. Add paragraphs (c)(10) and (c)(11).

The revisions read as follows:

§ 75.1502 Mine emergency evacuation and firefighting program of instruction.

* * * * *

(c) * * *

(3) The activation and use of refuge alternatives.

(4) * * *

(iv) Switching escapeways, as applicable;

(v) Negotiating any other unique escapeway conditions; and

(vi) Using refuge alternatives.

* * * * *

(8) A review of the mine map; the escapeway system; the escape, firefighting, and emergency evacuation plans in effect at the mine; and the location of refuge alternatives and abandoned areas.

(9) * * *

(10) A summary of the procedures related to constructing and activating refuge alternatives; and

(11) A summary of the procedures related to refuge alternative use.

* * * * *

13. Amend § 75.1504 by revising paragraphs (b)(3)(ii), (b)(4)(ii), and (c), and adding paragraphs (b)(6) and (b)(7) to read as follows:

§ 75.1504 Mine emergency evacuation training and drills.

* * * * *

(b) * * *

(3) * * *

(ii) Physically locates and practices using the continuous directional lifelines or equivalent devices and tethers, and physically locates the stored SCSRs and refuge alternatives;

* * * * *

(4) * * *

(ii) Locating escapeways, exits, routes of travel to the surface, abandoned areas, and refuge alternatives.

* * * * *

(6) Reviewing the checklist for constructing and activating refuge alternatives and components.

(7) Reviewing the procedures for use of the refuge alternatives and components.

(c) *Annual expectations training*. Over the course of each year, each miner shall participate in expectations training that includes the following:

(1) Donning and transferring SCSRs in smoke, simulated smoke, or an equivalent environment.

(2) Breathing through a realistic SCSR training unit that provides the sensation of SCSR airflow resistance and heat.

(3) Construction, where applicable; activation; and use of refuge alternatives similar to those in use at the mine, including—

(i) Construction, where applicable; activation; and operation of component systems; and

(ii) Instruction on when to use refuge alternatives during a mine emergency, emphasizing that it is the last resort when escape is impossible.

(4) A miner shall participate in expectations training within one quarter of being employed at the mine.

* * * * *

14. Amend § 75.1505 by revising paragraphs (a) and (b) to read as follows:

§ 75.1505 Escapeway maps.

(a) *Content and accessibility*. An escapeway map shall show the designated escapeways from the working sections or the miners' work stations to the surface or the exits at the bottom of the shaft or slope, refuge alternatives, and SCSR storage locations. The escapeway map shall be posted or readily accessible for all miners—

(1) In each working section;

(2) In each area where mechanized mining equipment is being installed or removed;

(3) At the refuge alternative; and

(4) At a surface location of the mine where miners congregate, such as at the mine bulletin board, bathhouse, or waiting room.

(b) *Keeping maps current*. All maps shall be kept up-to-date and any change in route of travel, location of doors, location of refuge alternatives, or direction of airflow shall be shown on the maps by the end of the shift on which the change is made.

* * * * *

15. Add §§ 75.1506, 75.1507, and 75.1508 to subpart P to read as follows:

§ 75.1506 Refuge alternatives.

(a) Each operator shall provide refuge alternatives with sufficient capacity to accommodate all persons working underground.

(1) Refuge alternatives shall provide at least 15 square feet of floor space and at least 60 cubic feet of volume per person.

(2) Refuge alternatives for working sections shall accommodate the maximum number of persons that can be expected on or near the section at any time.

(3) Refuge alternatives for outby areas shall accommodate persons assigned to work in the outby area.

(b) Refuge alternatives shall be provided at the following locations:

(1) Between 1,000 feet and 2,000 feet from the working face and from locations where mechanized mining equipment is being installed or removed;

(2) Spaced within one-hour travel distances in outby areas where persons work such that persons in outby areas are never more than a 30-minute travel distance from a refuge alternative or safe exit. However, the operator may request and the District Manager may approve a different location in the Emergency Response Plan (ERP). The operator's request shall be based on an assessment of the risk to persons in outby areas, considering the following factors:

proximity to seals; proximity to potential fire or ignition sources; conditions in the outby areas; location of stored SCSRs; and proximity to the most direct, safe, and practical route to an intake escapeway.

(c) Roof and rib support for the refuge alternative locations shall be specified in the mine's roof control plan.

(d) The operator shall protect the refuge alternative and contents from damage during transportation, installation, and storage.

(e) A refuge alternative shall be removed from service if examination reveals damage that interferes with the functioning of the refuge alternative or any component.

(1) If a refuge alternative is removed from service, the operator shall withdraw all persons from the area serviced by the refuge alternative, except those persons referred to in section 104(c) of the Mine Act.

(2) Refuge alternative components removed from service shall be replaced or be repaired for return to service in accordance with the manufacturer's specifications.

(f) At all times, the site and area around the refuge alternative shall be kept clear of machinery, materials, and obstructions that could interfere with the activation or use of the refuge alternative.

(g) Each refuge alternative shall be conspicuously identified with a sign or marker as follows:

(1) A sign or marker made of a reflective material with the word ''REFUGE'' shall be posted conspicuously at each refuge alternative.

(2) Directional signs made of a reflective material shall be posted leading to each refuge alternative location.

§ 75.1507 Emergency response plan; refuge alternatives.

(a) The *Emergency Response Plan* (ERP) shall include the following for each refuge alternative and component:

(1) The types of refuge alternatives used in the mine, i.e., a pre-fabricated self-contained unit; a secure space, constructed in place, with an isolated atmosphere; or materials pre-positioned for miners to use to construct a secure space with an isolated atmosphere.

(2) Procedures or methods for maintaining approved refuge alternatives and components.

(3) The rated capacity of each refuge alternative, the number of persons expected to use each refuge alternative, and the duration of breathable air provided per person by the approved breathable air component of each refuge alternative.

(4) The methods for providing breathable air and removing carbon dioxide with sufficient detail of the component's capability to provide breathable air over the duration stated in the approval.

(5) The methods for providing ready backup oxygen controls and regulators.

(6) The methods for providing an airlock and methods for providing breathable air in the airlock; except where adequate positive pressure is maintained.

(7) The methods for providing sanitation facilities.

(8) The methods for harmful gas removal (if necessary).

(9) The methods for monitoring gas concentrations, including charging and calibration of equipment.

(10) The method for providing lighting sufficient to perform tasks.

(11) Suitable locations of the refuge alternatives and an affirmative statement that the locations are—

(i) Not within direct line of sight of the working face; and

(ii) Where feasible, not placed in areas directly across from, nor closer than 500 feet radially from, belt drives, take-ups, transfer points, air compressors, explosive magazines, seals, entrances to abandoned areas, and fuel, oil, or other flammable or combustible material storage.

(b) For a refuge alternative constructed in place, the ERP shall specify that—

(1) The breathable air components shall be approved by MSHA; and

(2) The refuge alternative can withstand exposure to a flash fire of 300 °Fahrenheit (F) for 3 seconds and a pressure wave of 15 psi overpressure for 0.2 seconds.

(c) For refuge alternatives consisting of materials pre-positioned for miners to use to construct a secure space with an isolated atmosphere, the ERP shall specify—

(1) The means to store and protect materials from being damaged when moved;

(2) That the refuge alternative can withstand exposure to a flash fire of 300 °F for 3 seconds and a pressure wave of 15 psi overpressure for 0.2 seconds prior to construction and activation.

(3) The method to assure the refuge alternative is constructed and functional in 10 minutes after a person arrives at the pre-positioned materials;

(4) That all necessary materials have been provided as a self-contained unit ready to be activated and used within the secure space once constructed; and

(5) The means to assure establishment of approved breathable air in the refuge alternative promptly after construction.

(d) If the refuge alternative sustains persons for only 48 hours, the ERP shall detail advanced arrangements that have been made to assure that persons who cannot be rescued within 48 hours will receive additional supplies to sustain them until rescue. Advance arrangements shall include the following:

(1) Pre-surveyed areas for refuge alternatives with closure errors of less than 20,000:1.

(2) An analysis to indicate that the surface terrain, the strata, the capabilities of the drill rig, and all other factors that could affect drilling are such that a hole sufficient to provide required supplies and materials reliably can be promptly drilled within 48 hours of an accident at a mine.

(3) Permissions to cross properties, build roads, and construct drill sites.

(4) Arrangement with a drilling contractor or other supplier of drilling services to provide a suitable drilling rig, personnel and support so that a hole can be completed to the refuge alternative within 48 hours.

(5) Capability to promptly transport a drill rig to a pre-surveyed location such that a drilled hole would be completed and located near a refuge alternative structure within 48 hours of an accident at a mine.

(6) The specifications of pipes, air lines, and approved fans or approved compressors that will be used.

(7) A method for assuring that within 48 hours, breathable air shall be provided.

(8) A method for assuring the immediate availability of a backup source for supplying breathable air and a backup power source for surface installations.

(e) The ERP shall specify that the refuge alternative is stocked with the following:

(1) A minimum of 2,000 calories of food and 2.25 quarts of potable water per person per day in approved containers sufficient to sustain the maximum number of persons reasonably expected to use the refuge alternative for at least 96 hours, or for 48 hours if advance arrangements are made under paragraph (d) of this section;

(2) Manuals for the refuge alternative and components;

(3) Sufficient quantities of materials and tools to repair components; and

(4) First aid supplies.

§ 75.1508 Training and records for examination, maintenance, transportation, and repair of refuge alternatives and components.

(a) Persons who examine, maintain, transport, or repairing refuge

alternatives and components shall be instructed in how to perform this work.

(1) The operator shall assure that all persons assigned to examine, maintain, transport, and repair refuge alternatives and components are trained.

(2) The mine operator shall certify, by signature and date, the training of persons who examine, maintain, transport, and repair refuge alternatives and components.

(b) At the completion of each repair, the person conducting the maintenance or repair shall make a record of all corrective action taken.

(c) Training certifications and repair records shall be kept at the mine for one year.

16. Add § 75.1600–3 to subpart Q to read as follows:

§ 75.1600–3 Communications facilities; refuge alternatives.

(a) Refuge alternatives shall be provided with a communications system that consists of—

(1) A two-way communication facility that is a part of the mine communication system, which can be used from inside the refuge alternative; and

(2) Additional communication system and other requirements as defined in the communications portion of the operator's approved Emergency Response Plan.

[FR Doc. E8–13565 Filed 6–13–08; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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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430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–062–00179–7)	62.00	Oct. 1, 2007
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[9] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
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80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
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49 Parts:			
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50 Parts:			
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17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[8] Oct. 1, 2007
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.